LIBRARY
SUPREME COURT, U.S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1948

No. 23

SOLOMON MICHELSON, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 20, 1948.

CERTIORARI GRANTED APRIL 5, 1948.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 23

SOLOMON MICHELSON, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

INDEX

	Original	Print
Proceedings in U. S. C. C. A., Second Circuit	1	1
Statement under Rule 13	1	1
Record from D. C. U. S., Eastern District of New York	2	2
Indictment	2	2
Summary of docket entries	4	3
Transcript of trial proceedings	6	4
Caption and appearances	6	4
Witnesses for Government:		
Maurice M. Kratter:		
Direct	7	5
Cross	30	25
Redirect	50	44
Alvin E. Betts:		
Direct	52	46
Cross	53	47
Edward V. Sherry:		
Direct	55	49
Cross	63	55
Redirect	64	56
Owen Burke Yung:		
Direct	65	57
Cross	71	62

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 27, 1948.

	Original	Print
Record from D. C. U. S., Eastern District of New York—Continued		
Transcript of trial proceedings—Continued		
Defendant's motion for directed verdict of acquittal	73	64
Witnesses for Defendant:		
Solomon Michelson:		
Direct	78	68
Cross	97	85
Redirect	116	103
Isidor Gerstein:		
Direct	118	105
Cross	119	106
Redirect	125	111
Mary E. Kirk:		
Direct	125	111
Cross	126	112
Defendant's motion for mistrial	126	112
Benjamin Orgel:		
Direct	127	113
David Oppenheim:		
Direct	128	114
Cross	129	115
Louis Weitzman:		
Direct	130	116
Cross	131	117
Abraham Osterfeld:		
Direct	132	117
Cross	135	121
Neil Smith:		
Direct	137	123
Cross	138	124
Ruling of Court on requests to charge	141	126
Defendant's motion for directed verdict of acquittal	148	132
Charge of the Court	149	132
Verdict	163	144
Motion to set aside verdict	163	144
Defendant's requests to charge	164	145
Recital as to Government's exhibits	170	150
Recital as to defendant's exhibits	170	150
Judgment and commitment	171	151
Notice and grounds of appeal	172	152
Stipulation as to record and exhibits	175	153
Clerk's certificate (omitted in printing)	176	
Opinion, Frank, J.	177	155
Judgment	185	161
Clerk's certificate (omitted in printing)	187	
Order allowing certiorari	188	163

[fol. 1]

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA, Appellee,

against

SOLOMON MICHELSON, Defendant-Appellant

STATEMENT UNDER RULE 13

The indictment in two counts was filed in the United States District Court for the Eastern District of New York on September 3, 1946. It charges appellant with violations of the bribery statute, 18 U. S. C. A. 91. Count I charges that defendant did give $5,000 to an Internal Revenue Agent, and Count II charges that defendant did offer the said sum of money to the same Internal Revenue Agent, with the intent to influence the Agent's decision on a matter then pending before him, with the intent to influence said Agent to collude in and allow a fraud on the United States, and with the intent to induce said Agent to do an act in violation of his lawful duty.

The trial, resulting in a conviction, was held before Honorable Harold M. Kennedy, United States District Judge, and a jury, on January 2, 3, 6 and 8, 1947. A verdict of guilty was returned by the jury on both counts.

The sentence imposed by the Court on January 16, 1947, provided that defendant be imprisoned for 18 months on each count, prison sentences to run concurrently; a fine of $1.00 was imposed under Count I, and a fine of $2,500 was imposed under Count II. Defendant to stand committed until fines are paid or until he is otherwise discharged as [fol. 2] provided by law. Defendant filed a notice of appeal on January 16, 1947, and was released on bail pending appeal pursuant to order of the District Court. The fines imposed were deposited with the Clerk of the District Court pending appeal pursuant to order entered January 16, 1947.

A prior trial under the indictment was held on December 9 and 10, 1946, before Honorable Robert A. Inch, United States District Judge, and a jury, which resulted in a disagreement.

IN UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff,

against

SOLOMON MICHELSON, Defendant

INDICTMENT

The Grand Jury charges:

Count One

That on or about the 29th day of July, 1946, within the Eastern District of New York, the above named defendant, Solomon Michelson, did give a sum of money, to wit: Five Thousand Dollars ($5,000.00), to an officer and a person acting for and on behalf of the United States in an official function under the authority of the Treasury De- [fol. 3] partment, to wit: Maurice M. Kratter, Internal Revenue Agent, with intent to influence his decision and action on a question and matter then pending before him in his official capacity, with intent to influence said Internal Revenue Agent to collude in and allow a fraud on the United States and to induce him to do an act in violation of his lawful duty in respect to the defendant's income tax return. (Title 18, United States Code, Section 91.)

Count Two

That on or about the 29th day of July, 1946, within the Eastern District of New York, the above named defendant, Solomon Michelson, did offer a sum of money, to wit: Five Thousand Dollars ($5,000.00), to an officer and a person acting for and on behalf of the United States in an official function under the authority of the Treasury Department, to wit: Maurice M. Kratter, Internal Revenue Agent, with intent to influence his decision and action on a question and matter then pending before him in his official capacity, with intent to influence said Internal Revenue Agent to collude in and allow a fraud on the United States and to induce him to do an act in violation of his lawful duty in respect to the

defendant's income tax returns. (Title 18, United States Code, Section 91.)

A True Bill.

Emil C. Zimmermann, Foreman.

J. Vincent Keogh, United States Attorney, Eastern District of New York.

[fol. 4] IN UNITED STATES DISTRICT COURT

[Title omitted]

SUMMARY OF CLERK'S DOCKET ENTRIES SHOWING PROCEEDINGS IN THE DISTRICT COURT

1946

Sept. 3. Indictment filed.

Sept. 9. Before Moscowitz, J. Defendant and counsel Louis J. Castellano present. Clerk hands defendant copy of indictment. Defendant arraigned and pleads not guilty. $5,000 bail continued and defendant ordered to return October 2, 1946.

Dec. 9. Before Inch, J. Case called, defendant present. Trial ordered and adjourned to December 10, 1946. Defendant remanded.

Dec. 10. Before Inch, J. Case called, defendant present. Trial resumed. Jury retire. Jury return at 9:55 P. M. having failed to reach a verdict. Court declares a mistrial. Jury discharged. Bail fixed at $5,000. Defendant ordered to return January 2, 1947.

1947

Jan. 2. Before Kennedy, J. Case called, defendant present. Trial ordered and adjourned to January 3, 1947, at 2 P. M.

[fol. 5] Jan. 3. Before Kennedy, J. Case called, defendant present. Trial resumed and adjourned to January 6, 1947.

Jan. 6. Before Kennedy, J. Case called, defendant present. Trial resumed and adjourned to January 8, 1947.

Jan. 8. Before Kennedy, J. Case called, defendant present. Trial resumed. Jury retire. Jury returns and renders a verdict of guilty on each of Counts I and II. Defendant continued on bail to January 16, 1947, for sentence.

Jan. 16. Before Kennedy, J. Defendant and his counsel present. Defendant is sentenced to be imprisoned for 18 months and to pay a fine of $1.00 on Count I and to be imprisoned for 18 months and to pay a fine of $2,500. On Count II, defendant to stand committed until said fines be paid or he be otherwise discharged as provided by law, without costs and sentences of imprisonment on each count are to run concurrently.

Jan. 16. Judgment and commitment file, certified copies delivered to U. S. Marshal.

Jan. 16. Notice of Appeal filed.

Jan. 16. By Kennedy, J. Order filed fixing bail of $5,000 pending appeal.

Jan. 16. By Kennedy, J. Order filed for deposit of fine in Registry of Court pending appeal.

Jan. 16. By Kennedy, J. Order filed extending time to file record on appeal to April 16, 1947, and term of Court for one year.

Jan. 16. Notice of taking of appeal mailed to U. S. Marshal.

Jan. 16. Clerk's Statement with copy of notice of taking appeal mailed to Circuit Court of Appeals.

Jan. 17. Appeal Bond No. 41083 filed.

[fol. 6] IN UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF NEW YORK

Cr. #41165

UNITED STATES OF AMERICA

vs.

SOLOMON MICHELSON, Defendant

Transcript of Trial Proceedings

Brooklyn, New York,
January 2, 1947.

Before Honorable Harold J. Kennedy, U. S. D. J., and a Jury

APPEARANCES:

J. Vincent Keogh, Esq., United States Attorney for the Eastern District of New York (by Mario Pittoni, Esq., As-

sistant United States Attorney, for the United States of America.

Daniel McNamara, Esq., attorney for the defendant (by Louis J. Castellano, Esq., of counsel).

[fol. 7] Brooklyn, New York,
January 3, 1947.

Appearances: As before noted.

TRIAL CONTINUED

MAURICE M. KRATTER, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Pittoni:

Q. Mr. Kratter, you are an agent in the Internal Revenue Department?

A. That is right.

Q. How long have you been such an Internal Revenue Agent?

A. Since November, 1945.

Q. That is a little over a year ago, is that correct?

A. That is right.

Q. What are your duties as an Internal Revenue Agent?

A. My duties a e to examine information reported on income tax returns that are assigned to me by my squad chief, and to verify the net income as reported or to suggest and recommend any changes that I find warranted.

Q. Am I correct in saying that you make investigations from a civil standpoint?

A. That is right.

Q. Previous to your becoming an agent in the Internal Revenue Department, what was your occupation?

A. I was working for a firm of certified public accountants.

Q. Are you a C. P. A.?

A. I am.

Q. How long have you been a certified public accountant?

A. Since 1938.

Q. Now, Mr. Kratter, during the course of your duties were you assigned, or were you given the assignment of [fol. 8] investigating the records of Mr. Solomon Michelson.

A. Yes, the tax return of Solomon Michelson——

Q. Just answer yes or no, please.

A. Yes.

Q. Did you thereafter go to the premises of Mr. Solomon Michelson?

A. I did.

Q. And the Solomon Michelson whose premises you visited, is that the Solomon Michelson, the defendant, now on trial?

A. Yes.

Q. Now, Mr. Kratter, when is the first day that you ever went to the premises of Solomon Michelson?

A. On July 16th at about 3:30 in the afternoon.

Q. Previous to that time did you make any attempts to find Mr. Solomon Michelson?

A. I did.

Q. On the 15th did you do anything in regard to the defendant, Solomon Michelson?

A. May I explain the reason why I did——

Q. Just answer the question first?

A. On the 15th I went to the office of the New York City Tax Department in an attempt to locate Mr. Solomon Michelson's place of business—

Mr. Castellano: I object to that, your Honor.

The Court: Yes. You went to the City Tax Department?

The Witness: I went to the City Tax Department.

Q. Did you find the address of Solomon Michelson on that day?

A. No, I did not.

Q That was the 15th, is that correct?

A. That is the 15th.

Q. Now, the following day where else did you go and attempt to find the address of Solomon Michelson?

A. On the following day I went to the office of the New York City Department of Licenses.

Q. Yes. Did you get the address of Solomon Michelson?

A. I obtained the address of Mr. Michelson's place of business from the files of the Department of Licenses.

[fol. 9] Q. Did you on the same day, then, go to the place of business of Solomon Michelson?

A. I did.

Q. About what time of day did you get there?

A. About 3:30 in the afternoon of the 16th of July.

Q. How long were you there on the 16th, that is Tuesday, now.

A. That was Tuesday. For about 15 or 20 minutes.

The Court: We will take a short recess.

(Short recess.)

Q. Now, on the 16th, that is Tuesday again, how long did you spend at the place of business of Solomon Michelson?

A. About 15 or 20 minutes.

Q. Briefly, what was the conversation?

A. I presented myself to Mr. Michelson, told him who I was and told him I had been assigned his tax return for examination, and asked him if he would show me what books and records he had there.

Q. At that time did you have a conversation with him about his own accountant?

A. Well, he told me he wanted to find out if his accountant would approve my looking at his books and records.

Q. He told you what?

A. He told me that he wanted to find out if his accountant would approve my examining his books and records.

Q. What did you do then?

A. Well, he pointed out a telephone to me and I called up the accountant.

Q. Who gave you the number?

A. Mr. Michelson gave me the phone number.

Q. What was the gist of the conversation between you and the accountant?

A. I told the accountant who I was——

Mr. Castellano: I object to that.

The Court: This was in the presence of the defendant? [fol. 10] Mr. Pittoni: Well, the conversation between the agent and the accountant, of course, was on the telephone.

The Court: Yes, but he can state what he said.

Mr. Pittoni: This was in the presence of the defendant?

The Court: It was in the presence of the defendant?

The Witness: This was in the presence of Mr. Michelson.

The Court: Tell us what you said.

The Witness: I told the accountant who I was, that I was at Mr. Solomon Michelson's place of business, that I had been assigned his tax return, his income tax return for routine examination, and that Mr. Michelson wanted to get his, that is, the accountant's approval, for me to make the examination.

Q. Thereafter what did you say to Mr. Michelson?

A. Mr. Michelson spoke to his accountant thereafter.

Q. What did you say to Mr. Michelson?

A. I told Mr. Michelson his accountant wanted to speak to him.

Q. And you left the telephone?

A. And upon speaking to Mr. Michelson, after Mr. Michelson took the phone and spoke to the accountant he told me that he would show me his books and records. I looked at them to see if he had all the records that I would need for the examination, and told him I would be back on the following day.

Q. Where did you go after you left Mr. Michelson's premises on Tuesday, July 16th?

A. I returned to my office.

Q. Your office where?

A. 165 Broadway.

Q. Now, the following day, Wednesday, July 17, 1946 did you go to the premises of Solomon Michelson?

A. On July 17th I went to Mr. Michelson's place of busi- [fol. 11] ness at 74 Bowery at about 11 o'clock in the morning as we had agreed. I was to meet his accountant there at 12.

Q. When you went into the premises of Solomon Michelson on Wednesday, the 17; what did you do?

A. I asked Mr. Michelson to give me his books and records.

Q. Are those the same books and records which you had been shown the day before?

A. That is right. They were the same.

Q. Did you look at the books and records?

A. I sat down at a desk behind Mr. Michelson's counter and I started examining the books and records.

Q. How long did you look at the books and records before you got involved in any conversation with Mr. Michelson?

A. About an hour and a half I would say.

Q. In the meantime did you talk to Mr. Michelson?

A. I asked him for certain other records I needed to support the books, but there was no general conversation.

Q. In your examination of the books and records on that morning before you went to lunch what did you find?

Mr. Castellano: I object to what he found. We are not trying a tax case.

The Court: Sustained. (Addressing witness) What did you say to Michelson after your examination, if anything?

The Witness: Before going to lunch I pointed out to Mr. Michelson there were numerous cash purchases recorded on the books and I would like to see his purchase vouchers in substantiation of these entries. He said he might be able to find some invoices to support these purchases.

Q. Did you make any examination of the brokerage statements for 1942?

A. Just prior to the time we went out to lunch I asked Mr. Michelson for the brokerage statements to substantiate his security transactions which were recorded on the income [fol. 12] tax return. I examined the statements for the first few months of 1942 just prior to going out to lunch.

Q. After you looked at the couple of months of 1942 what did you do?

Mr. Castellano: I object to anything further along this line.

The Court: What is the question?

Mr. Pittoni: He has just finished testifying he made an examination of the brokerage statements for 1942 and I said, "After you made that examination of a couple of months what did you do?"

The Court: I sustain the objection. (Addressing witness) Did you communicate anything to Mr. Michelson about what you found concerning brokerage statements on that day?

The Witness: Yes.

The Court: When? After lunch?

The Witness: No; just before we went out to lunch.

The Court: What did you say to him and what did he say to you?

The Witness: I pointed out to Mr. Michelson there were numerous credit entries on the brokerage statements representing deposits of cash and checks.

Mr. Castellano: I make the same objection.

The Court: It is part of a conversation. I overrule it.

Mr. Castellano: Exception.

The Witness: I asked Mr. Michelson what these deposits represented and he could not explain them to me.

Q. Then what did you do after that?

A. Then I told Mr. Michelson that it appeared that his [fol. 13] accountant was not coming and so I would go out to lunch at that time. It was about 1:15 already.

Q. Did you go out to lunch alone?

A. No. Mr. Michelson said he would come out with me.

Q. Did you suggest to Mr. Michelson that he go with you?

A. No, I did not.

Q. Who made the suggestion?

A. Mr. Michelson just said he would come along with me.

Q. Up until that time was there any conversation of any kind with respect to paying you money?

A. No, none whatsoever.

Q. Where was this cafeteria that you went to lunch?

A. The Cafeteria was directly across the street from Mr. Michelson's place of business at 74 Bowery.

Q. You say Michelson came along with you?

A. That is right.

Q. How many people were in the place, roughly, when you went in there?

A. Well, the crowd—the place was quite crowded. I would say most of the seats were occupied.

Q. Did you and Mr. Michelson sit together?

A. Yes, we sat together.

Q. Did you talk to Mr. Michelson while you were sitting there having your lunch?

A. Yes, we had a conversation.

Q. In general, what was the conversation about?

A. Well, at first the conversation was general. We were talking about the particular restaurant there that we were in and then Mr. Michelson gradually turned the conversation towards his income tax return and he wanted to know what would have to be done in connection with straightening out his income tax return.

Q. What did you say to that?

A. I told him I had not finished my examination at that time and I would have to finish the examination before I knew what the entire difficulty was.

[fol. 14] Q. How long were you in the restaurant with Mr. Michelson?

A. About 30 or 40 minutes I would say.

Q. While you were in the restaurant with Mr. Michelson did he at any time point out anybody to you in the restaurant?

A. No, he did not.

Q. You say you were in the restaurant about 20 minutes; is that correct?

A. About 20 minutes; that is right.

Q. After you left the restaurant what did you do?

A. After we left the restaurant we started to take a walk, and as we left the restaurant we might have walked about 30 yards when Mr. Michelson took a roll of bills out of his pocket and said, "Here is $100", and offered the bills to me while we were walking on the street. I pushed his arm away and walked away from him and I said to him, "What is the matter with you? Is there something wrong with you?" And I walked away from him and I wanted to turn around and go back to the store where his place of business was and Mr. Michelson said, "Let us go for a walk", and he insisted we go for a walk, he wanted to talk to me about his income tax return.

Q. And you walked with him?

A. I walked with him because he refused to go back to his place of business unless we went for a walk and had this opportunity to have a conversation.

Q. During your walking with Mr. Michelson did he offer any more money to you?

A. He asked me how much I wanted to fix up the matter so that he would not have to pay too much to the Government and I told him I wouldn't do anything for him like that. He offered me $250 and I refused it and then he offered me $300 and he told me that was all he had at the place of business. I told him I wouldn't touch it. He insisted that we talk about it, and kept walking, and finally we reached a park in the neighborhood there, about two or three blocks away, and we sat down there for a time and continued talking. I tried to tell Mr. Michelson, I tried to con-

[fol. 15] vince him we should return to his place of business. I said I wanted to return to his shop and finish the examination. He insisted that we come to some sort of an agreement regarding the settling of his income tax return, or what I would report as being deficient on his tax return. We had a conversation that lasted about an hour, I would say, and we sat on the bench in the park for a while and we got up and walked around some more. Michelson finally said he would give me $1,000 to fix things up. I told him I wouldn't think of it, I didn't want to get involved in any such business. He insisted and refused to return to his place of business.

Q. Why didn't you go back to his place of business and look at the books by yourself?

Mr. Castellano: I object to that.

The Court: Sustained.

A. He kept on insisting that I take something——

Mr. Pittoni: Wait a minute. The objection was sustained.

The Court: There is no question pending.

Q. At any rate, during the course of your duties as an Internal Revenue Agent, do you ever make any examination of books without the presence of the taxpayer or his accountant?

Mr. Castellano: I object to that as irrelevant.

The Court: Overruled.

Mr. Castellano: Exception.

A. No.

Q. All right. Now, eventually you went back to the store; is that right?

A. Well, we eventually went back; that is right.

[fol. 16] Q. Was there any further conversation between you and Mr. Michelson about the paying of money until you finally went back to the store?

A. Well, when Mr. Michelson kept insisting and refused to return to the store, I finally told him O.K. when he said he wanted to give me $1,000 to straighten up his tax. Then immediately thereafter he said, "Make it $800", and I said, "O.K.", in order to get back to the store.

Q. You were back at the store already now?

A. No. This was prior to the time we left the park.

Q. When you went back to the store what happened?

A. When we went back to the store I continued my examination and examined the remainder of the brokerage statements for 1942 and 1943.

Q. Yes.

A. Then made certain records of the amounts that had been deposited in those brokerage statements. Mr. Michelson was still unable to explain what these deposits represented.

Q. Did you draw his attention to these various deposits?

A. Yes. I asked him again, when I saw that the sum was increasing each month, I asked him what these items represented and he was unable to explain it at any time at all.

Q. How long were you there before you had any conversation which had not to do with the books? At any rate, you drew his attention to these brokerage accounts; is that right?

A. That is right.

Q. He did not give you an explanation?

A. No.

Q. What happened after that?

A. Well, soon after we returned to this store from the walk after lunch Mr. Michelson dropped a package at my feet and said, "Here is the $800." I continued my examination and did not touch the package, and at a little after 4, I believe it was, I finished my examination and I put my papers together and put them in my bag and got up. I lifted the package from the floor and gave it back to Mr. Michelson and I said I wouldn't take the money. He [fol. 17] insisted on talking to me. He sort of stood in the way of the exit and would not allow me to pass and to go out into the street. He has a part of a large store in one of the jewelry exchanges on the Bowery, and there was a counter behind which I was working and the counter has just about enough room for one person to stand behind or to move around behind and one person can very conveniently block the exit. I did not try to force my way out. I wanted to be agreeable to him as far as his income tax investigation was concerned. I stood there talking to him for a while and he insisted I come to some sort of an agreement with him regarding fixing up his income tax return. I refused. I told him I would not do anything for him. I told him

it appeared at this time he owed the Government about $25,000——

Mr. Castellano: I object to this as irrelevant to this issue.
The Court: Not at all. It is a part of a conversation.
Mr. Castellano: Exception.

A. (Continued.) I told Mr. Michelson about $35,000 in deposits were entered on his brokerage statements that he was not able to explain and he had not offered me substantiation for the numerous cash purchases which were recorded on his books. I told him I would have to turn the case over to the special agents. He kept on talking to me in the same place, insisting that I do something for him, and he apparently became very frightened when he realized I had all that information and there was so much wrong——

Q. Do not give his mental conclusions. Just give us what was said.

A. It appeared to me he became very frightened and he kept on insisting I do something for him. In the meantime I gradually edged out of the store to the street and Mr. [fol. 18] Michelson walked down the street with me.

The Court: While you were in the park with Michelson did you at any time tell him that you could not or would not return to the store without him?
The Witness: That is right.
The Court: You did say that?
The Witness: Sure.
The Court: That was your practice?
The Witness: I told him I couldn't make my examination, I did not feel that was the proper procedure to make the examination without the taxpayer or his representative present.

Q. At any rate you left the store and you started going where?

A. I walked towards Lafayette Street, the I. R. T. station at Canal Street and Lafayette.

Q. Did Mr. Michelson come with you?

A. Mr. Michelson kept walking alongside.

Q. Did you and Mr. Michelson have a conversation while you were walking along together?

A. Yes, a conversation ensued during the walk. Mr. Michelson kept insisting that I do something to straighten

out his tax return and fix things up for him so he wouldn't get into too much trouble. He offered me $3,000 while we were walking toward the subway, and then he said, "Make it $5,000." I told him I wouldn't touch that kind of money, I wasn't interested in it, I didn't want to get mixed up in that situation. Then he kept insisting. We had walked about two or three blocks from his office, and I finally stopped in the street and kept talking to him. He refused to leave me, and insisted that we come to some sort of agreement regarding his tax situation. I finally told him—he said, "Will you take $5,000?" And he told me he would pay another $5,000 to the Government. I finally said, "O.K.", [fol. 19] in order to get away from him, and he told me he would call me up when he had the money, and he asked me for my business card and home telephone. I gave him one of my cards and wrote down the phone number while we were standing on the street, and then we parted.

Q. If you saw that card again would you recognize it?

A. I would.

Q. I show you a card with the name Maurice M. Kratter, and so forth, on it, do you recognize that?

A. Yes, this is the card that I just mentioned; this is the card that I gave to Mr. Michelson on the street.

Q. And what telephone number did you put on there?

A. That is my home phone number that I wrote down on the card.

Q. At the time you wrote that phone number on that card, where did you do that?

A. While we were standing there in the street, I either leaned on my knee or on the bag on something like that.

Mr. Pittoni: I offer the card in evidence, your Honor.

(Marked Government's Exhibit 1 in evidence.)

Q. Now, you say you gave this card to Mr. Michelson, is that correct?

A. That is right.

Q. How soon after you gave this card to Mr. Michelson did you finally leave him and take the subway?

A. Immediately thereafter. At first he told me he wanted me to come back to his place of business to take $3,000 which he said he had there, and that he would get in touch with me to give me the remaining $2,000 in about a week. I told him I would not take the money.

Q. Then where did you go from there?

A. From there I went home.

Q. Where do you live, Mr. Kratter?

A. At 20th Street and Fourth Avenue, Manhattan.

[fol. 20] Q. Did you make any reports for the 16th and 17th?

A. You mean time reports?

Q. That is right.

A. Yes, we make one every day.

Q. I show you two documents entitled "Daily report of official duties performed," and so forth. One is dated July 16, 1946 and the other is dated July 17, 1946. Are those reports you made of your duties?

A. On those two days, that is right.

Q. Now, Mr. Kratter, will you take the one of July 16, 1946? You have nothing on there for Mr. Michelson, have you?

A. No.

Q. Is there any particular reason why that isn't put in there?

Mr. Castellano: I object to that, your Honor.

The Court: Sustained.

Mr. Pittoni: I offer these two sheets in evidence, your Honor, July 16, 1946 and July 17, 1946.

Mr. Castellano: Are those the defendant's two exhibits used in the last trial?

Mr. Pittoni: Well, now——

The Court: Look at them, Mr. Castellano.

Mr. Castellano: Let me see them. (Cards handed to Mr. Castellano.) They appear to be, but there is no identification——

The Court: I do not care about that. Do you have any objections to these?

Mr. Castellano: No objection.

The Court: All right. Received with no objection.

(Marked Government's Exhibit 2 in evidence.)

Q. What is customary to put on those daily reports that you make, Mr. Kratter?

Mr. Castellano: I object to what is customary.

The Court: Sustained.

[fol. 21] Q. All right. Now, the following day, Thursday, July 18, 1946, what did you do in the morning?

A. In the morning I had an appointment on another examination.

Q. I see. When you got finished with that other appointment did you go back to the office?

A. Yes, I went back to the office on that day.

Q. Did you have a conversation with any other agent in the office about Solomon Michelson?

A. Yes, I reported the entire episode with Mr. Michelson to one of the older agents in my squad. He advised me——

Mr. Castellano: I object to that.

Q. Wait a minute. All right, then, now we are on Thursday, July 18th. The following day did you go to the office of the Intelligence Unit, Treasury Department?

A. That is right.

Q. Where are they located?

A. They are located at 253 Broadway.

Q. Where is your office?

A. At 165 Broadway.

Q. When you were brought to the office of the Intelligence Unit, Treasury Department, did you meet Agent Burke Yung?

A. I did.

Q. That is the gentleman sitting next to me here?

A. That is right.

Q. This is now Friday, July 19, 1946, is that correct?

A. That is right.

Q. Did you have a conversation with Agent Yung and other agents in the room about the proceedings of the previous week, I mean the previous proceedings of the week?

A. Yes, I told the entire story about my relation with Mr. Michelson to Agent Yung——

Mr. Castellano: I object to what he said.

The Court: Do you object?

[fol. 22] Mr. Castellano: To anything further, as to what he said.

The Court: To anything further?

Mr. Castellano: Yes.

The Court: Well, yes.

Q. At any rate you had a conversation with Agent Yung and other agents about the Michelson situation?

A. I did, that is right.

Q. Did you mention to Mr. Yung the fact that you had given that card to Mr. Michelson?

A. I did.

Q. And did Mr. Yung give you instructions with respect to that card?

A. He did.

Q. That same day, Friday, July 19, 1946, were you at your home between the hours of 5:30 and 6:30?

A. I was.

Q. And some time around 6 o'clock did you receive a telephone call?

A. I did.

Q. And did you answer the telephone yourself?

A. I answered the phone.

Q. When you answered the telephone——

The Court: I am not clear on what day this was.

Mr. Pittoni: This is on Friday, July 19th. You see that morning he talked to the other agents——

The Court: Yes, I know, and at 6 o'clock that night you got a call, did you?

The Witness: Yes, at my home.

Q. And you answered the phone?

A. I answered the phone, that is right.

Q. Did you recognize the voice?

A. I recognized the voice as Mr. Michelson.

Q. When you recognized the voice of Mr. Michelson what did you do?

A. I told him, "Just a second," and I called a neighbor of mine in to take the phone call, to tell Mr. Michelson that I was not available, and that he should take a phone [fol. 23] number where I would call Mr. Michelson on Monday morning.

Q. Did that neighbor call off the number as he was speaking to Mr. Michelson?

A. Yes, as he was speaking to him he called off the telephone number which I wrote on a slip of paper.

Q. I show you a green slip of paper which apparently is from a check book. Will you look at that?

A. This is the slip of paper and the phone number that I wrote down at the time this phone call was made.

Q. That evening, Friday, July 19, 1946, did you call that number back?

A. No, I did not call it back that evening.

Q. Did you do anything further on the Michelson case until the following Monday morning?

A. No, nothing at all.

Q. Now, Monday morning, July 22, 1946, what did you do?

A. On Monday morning I reported to the office of Agent Yung and I told him about this——

Q. Wait a minute. You reported——

A. I reported to the office of Agent Yung.

Q. Did you have a conversation with Special Agent Yung in relation to that conversation you had had that Friday evening?

A. I did.

Q. Did you receive certain instructions from Agent Yung?

A. I did.

Q. After you received these instructions from Agent Yung what did you do?

A. I called this phone number from the office of Agent Yung.

Q. Was that in the presence of Agent Yung?

A. In the presence of Agent Yung.

Q. And when you made the call were you able to talk to Mr. Michelson, on the first call?

A. I believe he wasn't in yet——

Q. Were you able to talk to Mr. Michelson the first time?

A. No, I did not speak to Mr. Michelson.

[fol. 24] Q. Did you try again later on in the morning?

A. I tried again later on, I again made a call in the presence of Special Agent Yung.

Q. What time was?

A. About 11.30 I believe.

Q. Are you sure it was 11.30 or a little later?

A. It was around noon, I don't remember the exact hour; it may have been 11.30 or 12 o'clock.

Q. At the time you made the second call which you say was around noon were you able to talk to Mr. Michelson?

A. Yes, I spoke to Mr. Michelson.

Q. And what number did you call?

A. I called Canal 6-8640.

Q. Is that the same number that appears on this slip of paper?

A. I believe that is the number.

Mr. Pittoni: I offer the paper in evidence with the telephone number Ca—6-8640.

Mr. Castellano: I object to it as not being admissible.

The Court: Not what?

Mr. Castellano: The paper made here by this witness, the notation on that paper, would not be binding on us.

The Court: Sustained. Mark it for identification.

(Marked Government's Exhibit 3 for Identification.)

Mr. Pittoni: If it please your Honor, may I discuss that point?

The Court: Well, if it is to be at length you had better step up here.

Mr. Pittoni: No, it isn't going to be at length.

The Court: All right.

Mr. Pittoni: He puts down the telephone number on that slip of paper, and then in calling back that same telephone number on Monday morning he talked to Mr. Michelson, he recognized the voice and talked to Mr. Michel- [fol. 25] son. I therefore contend that it is admissible in evidence now.

The Court: It is somewhat similar to a statement that is consistent with the statement that the witness makes on the stand, isn't it?

Mr. Pittoni: It is in corroboration of the statement.

The Court: I always believe statements consistent, prior statements, consistent with those made on the stand, are inadmissible.

Mr. Pittoni: Well, all right.

The Court: I refer you to the Rappy case, which was decided last month.

Mr. Pittoni: I am afraid I haven't read that one yet.

The Court: There are ways it can be made competent, for instance, if Mr. Castellano cross examines on it.

Mr. Pittoni: I would rather Mr. Castellano decide that himself.

Q. All right. Now, we are still on Monday, July 22, 1946. Tell us briefly what the conversation was between you and Mr. Michelson.

A. I spoke to Mr. Michelson asking him why he had called me on the previous Friday evening. He told me that he was still trying to get the balance of the money. He told me to call him back on the Friday following. That was the gist of the conversation on that date.

Q. He told you to call him back on Friday?

A. To call him back on Friday.

Q. After you finished this conversation over the telephone with Mr. Michelson, how much longer did you stay in the office of the Intelligence Unit?

A. I believe I went out to lunch shortly thereafter.

[fol. 26] Q. Am I correct in saying that between Monday, July 22nd, and Friday, July 26, 1946, you did nothing further on the Michelson case?

A. That is right.

Q. Did you have a conversation on Monday, July 22, 1946, with Agent Burke Yung in respect to that telephone conversation which you had with Solomon Michelson?

A. The one I had on that same day?

Q. That is right, that is still Monday, July 22nd.

A. I did.

Q. All right. Now, moving on to Friday, July 26, 1946, tell us what you did on that day in regard to the Michelson case.

A. On Friday morning I reported at the office of Special Agent Yung, and at some time during that morning I made a phone call to that same Canal 6 number.

Q. What was the number that you called that morning?

A. Canal 6-8640, I believe it is.

Q. When you telephoned that number, Mr. Kratter, were you able to talk to Mr. Michelson?

A. Yes. I recognized Mr. Michelson's voice when the party answered the phone, and the party said it was Mr. Michelson.

The Court: This is now the 26th of July?

The Witness: That is right, the 26th.

Mr. Pittoni: This is Friday, July 26th, your Honor.

Q. And what was the gist of the conversation between you and Mr. Solomon Michelson on the telephone that morning?

A. Mr. Michelson told me that he had succeeded in getting the $5,000 together, and that he wanted to meet me to give me the money. I told him that I would make arrangements for meeting him in some hotel room, and he objected very strenuously to meeting in a hotel room; he didn't like that type of arrangement; he was afraid he would get hurt, or some such fear seemed to enter his mind.

[fol. 27] I told him that the only reason I was taking the money from him was because he insisted, and that if he wouldn't do things the way I insisted and the way I planned I would drop the whole thing, because I told him I didn't want to get involved in that type of business in the first place.

Q. Was this conversation with Mr. Michelson in the presence of Agent Burke Yung?

A. That is right.

Q. And after you finished telephoning Mr. Michelson on this Friday, July 26, 1946, did you have a conversation with Agent Burke Yung in regard to what you and Mr. Michelson had said on the telephone?

A. Yes, I did.

Q. And thereafter you left the office of Mr. Yung, is that correct?

A. That is right.

Q. Did you do anything else on the Michelson case until the following Monday morning?

A. No, nothing at all.

Q. Now, let us move on to Monday, July 29, 1946. On that Monday, July 29, 1946, tell us what you did and what you saw and so forth.

A. On the morning of July 29th, that was a Monday morning, I reported to the office of Special Agent Yung. At about 10 o'clock I left the office of Special Agent Yung in the company of Agents Yung and Geary and Sherry, and Narcotic Agents Teats and Betts, and we proceeded to the St. George Hotel. We went to the third floor where we occupied rooms 31 and 36. Agents Teats and Betts proceeded to install a listening device in room 31, and a pick up device in room 36 and——

Q. May I stop you for a moment?

A. Yes, certainly.

Q. Where was room 36 in relation to room 31?

A. Room 36 was across the hall, about two or three doors down the hall.

Q. Now, continue.

A. At about 11 o'clock the installation was completed and we began making tests of it. At about 11.30 I made a phone call to Mr. Michelson at the Canal 6-8640 number. Mr. Michelson answered, I recognized his voice, and I told [fol. 28] him I was at the St. George Hotel, and he said he would come right over. I told him to take a taxicab. And that was the end of that conversation.

Shortly thereafter——

Q. Wait a minute. This telephone call you made to Mr. Michelson, was that in the presence of anybody?

A. That was in the presence of Special Agent Burke Yung in room 31.

Q. All right, go ahead.

A. Then while still in the room, shortly after the conversation Special Agent Yung in the presence of Agent Geary searched me, searched my bag and the entire contents of the room. Then they left me alone in the room some time after 11.30.

Q. Did Mr. Yung find any money on you?

A. Yes, I had some money in my wallet.

Q. About how much?

A. It was about $60, I believe it was.

Q. Now, you say Agents Yung and the other agents left you alone in room 31, is that correct?

A. Yes.

Q. What did you do after the agents left you?

A. I just sat there and waited to hear from Mr. Michelson.

Q. How long did you wait until you heard from Mr. Michelson?

A. About twenty minutes later, I think it was about five to twelve the phone rang and I recognized Mr. Michelson's voice. He said he was in the lobby of the hotel. I told him to come up to room 31, that I was in room 31.

A few minutes later there was a knock on the door. I opened the door and Mr. Michelson came in, and I closed the door after him. He dropped a package on a dresser or chifferobe, something like that that was in the hotel

room, and he sat down and I sat down. I asked him if he had the money, and he said, "Yes, it is in the bag over there." I took the bag, unwrapped it, and he took out a large number of five, ten and twenty-dollar bills, and he said, Mr. Michelson said, "There is $5,000 there." I [fol. 29] made a quick count of the bills and satisfied myself that there was approximately $5,000 in the package. Then we had a conversation right after that.

I asked Mr. Michelson what he wanted me to do for this money, and he told me that he wanted me to turn in a report which would indicate that he owed about $1200 on his 1943 tax return and about $900 on his 1942 return. He said that was all he wanted me to do.

Then I told him, "You understand the only reason I am doing this is because you insist upon it, isn't that so?" And he said, "Yes, that is right."

After that we had some unrelated conversation, and he offered me a copy of his 1942 return which I had requested before of him, and I told him I didn't need it at that time and I returned it to him.

Shortly after that I said, "Well, I think that is all." We got up, and Mr. Michelson and I walked over to the door. I opened the door, and we stepped out into the hall. I had the package of money under my left arm. Whereupon Special Agents Yung and Geary presented themselves to Mr. Michelson and took him back into the room. They asked Mr. Michelson if that was his money, and he said yes. They asked me how much there was, and I said $5,000. They they asked him what he wanted me to do, what he was going to do with this money, and he said he would tell it to the proper authorities.

The Court: What?

The Witness: He said he would tell it to the proper authorities.

Q. Then what happened after that?

A. Then we left the hotel and we went to the office, to your office, as a matter of fact, and Mr. Michelson was brought there too.

Q. You came over, you say, over to my office?

A. That is right.

[fol. 30] Q. Did you come into my room together with the special agents and Mr. Michelson?

A. I did for a couple of minutes, and then you asked me to leave.

Q. Who asked you to leave?

A. You or Agent Yung.

Q. Now, Mr. Kratter, do your daily reports show in detail the activities on each day?

A. They show the case that we are activity engaged on——

Mr. Castellano: Objected to. The documents speak for themselves, your Honor.

The Court: Sustained.

Mr. Pittoni: All right, your witness.

The Court: We will take a ten-minute recess.

Cross-examination.

By Mr. Castellano:

Q. Mr. Kratter, you said something about looking up the address of the defendant on July 15th and 16th.

A. That is right.

Q. Does the tax return have an address at the top of it?

A. It does.

Q. Did you find an address at the top of the tax return of Mr. Michelson?

A. I did.

Q. What was that address?

A. It was an address in Brighton Beach, Brooklyn.

Q. Do you recall the address?

A. I don't recall the exact address.

Q. Was it his place of residence?

A. I don't know what it was. I presume it was.

Q. Did you go down there?

A. No. I wrote a letter to that address. I wrote two letters to that address and they came back unknown.

Q. You don't recall what the address was?

A. Something like 3162 Brighton 6th Street.

Q. Brooklyn, New York?

A. Brooklyn, New York.

Q. Did you look up any other return of the defendant to find out the address of the defendant?

[fol. 31] A. I called up the control room for the 1944 and 1945 returns and they were filed under the same address.

Q. The same address?

A. That is right.

Q. What was the date you say you visited his premises at 74 Bowery?

A. On July 16th.

Q. At what time of the day?

A. At about 3.30 in the afternoon.

Q. And you remained there about twenty minutes?

A. Fifteen or twenty minutes.

Q. And you returned there the following day?

A. That is right.

Q. What time did you arrive on July 17th?

A. At about eleven.

Q. In the morning?

A. Eleven in the morning. That is right.

Q. Will you decribe the premises of the defendant at 74 Bowery?

A. 74 Bowery is a large store. Various sections of the store are rented out to jewelry dealers and each dealer occupies a certain part of the store. The store is not sectioned off. All the dealer has is a showcase and he stays behind the showcase, which usually allows room for a safe and a desk and merchandise and other items a dealer may need. There is also a space behind the showcase to walk back and forth and open the showcase and to deal with the customers.

Q. As you went to the main entrance of the store at 74 Bowery in the Borough of Manhattan you see a large number of counters and showcases

A. That is right.

Q. And the defendant Michelson occupied one of these counters or showcases?

A. He had two counters; one in the front and one adjoining running alongside the side of the store.

Q. Both together?

A. Both together.

Q. In the corner?

A. In the corner of the store at the front.

Q. As you enter?

A. That is right.

[fol. 32] Q. As you enter is there a small gate between the showcase and the wall?

A. Yes, there is a gate closing off Mr. Michelson's section from the center of the store.

Q. That gate is about 3 feet high?

A. Yes, that gate is about 3 feet high.

Q. And you can stretch your arm over and touch a lock to open it?

A. I don't know whether there is a lock there, but you can reach over it very easily. It is only about 3 feet high.

Q. On the 17th did you go through that gate in the morning?

A. On the 17th I went through that gate.

Q. And did you give Mr. Michelson this card bearing your name and address, your Treasury card?

Mr. Pittoni: Object to the question. Will you kindly state when?

Q. On July 17th at about 11 A. *M.*

A. Not on July 17th.

Q. You tell us the date you gave Michelson that card?

A. I gave Mr. Michelson this card on July 16th when I first met him.

Q. Has that got an inscription there "Defendant's Exhibit A"?

A. That is right.

Mr. Castellano: I offer it in evidence.

Mr. Pittoni: No objection.

(Card received in evidence and marked Defendant's Exhibit A.)

Q. After you gave the defendant your card did you sit down at a table behind the counter?

A. You mean on the 17th?

Q. On the 17th, yes, the second day you were there.

The Court: Wait a minute. When did you give him a card?

[fol. 33] The Witness: On the 16th.

The Court: Which day are you talking about?

Q. On the 17th you went to the premises about 11 A. M.?

A. That is right.

Q. Did you go through the gate?

A. On the 17th I went behind the counter through the gate.

Q. Did you sit at a table?

A. That is right.

Q. Did you ask the defendant for some books?

A. I asked him for his books and records.

Q. Did he hand you a ledger?

A. He handed me a general ledger and a cash book.

Q. At the time he handed you the general ledger did you make a statement to him, "This will cost you $800"?

A. I never made any such statement.

Q. Did you demand $800 in any form at that time?

A. I never made any such demand. I never demanded any money from him at any time.

Q. How long did you work in the store on the morning of July 17th?

A. About two hours.

Q. Did the defendant furnish you with the books and records that you asked for during that period?

A. He did.

Q. Did you telephone to the defendant's accountant during that period?

A. No, not on that date.

Q. Not on July 17th?

A. No.

Q. Did you telephone to him on July 16th?

A. On July 16th I did.

Q. Was that in the presence of Mr. Michelson?

A. Yes.

Q. Tell us what you told the accountant?

A. I told the accountant I was an Internal Revenue Agent and I had been assigned the tax return of Mr. Michelson. I told him I was calling from Mr. Michelson's place of business and that Mr. Michelson asked me to call him to get his approval so that I could examine the books.

[fol. 34] At what time did you leave the store on July 17th, to go to lunch?

A. About 1.15.

Q. And Michelson went with you?

A. Yes.

Q. And that was directly across the street from Michelson's store?

A. That is right.

Q. And that is a cafeteria where you serve yourself?

A. That is right.

Q. How long did you remain in the restaurant with Michelson?

A. About a half an hour.

Q. And you both sat together?

A. That is right.

Q. Was it crowded?

A. Well, it was not crowded, no.

Q. As I recall your testimony on the last trial, you stated it was not crowded, it was rather late.

Mr. Pittoni: He is not using those minutes properly, your Honor.

Mr. Castellano: All right. Forget it.

Mr. Pittoni: We don't care what he remembers.

Q. At the last trial, on December 9, 1946, were you asked these questions and did you make the following answers:

"Q. And it was quite a crowded lunchroom? A. Not too crowded. It was pretty late.

"Q. How many people sat at a table? A. Well, the tables were arranged in rows and Mr. Michelson and I sat at a table alone."

Were you asked those questions and did you make those answers?

A. That sounds like what I said.

Q. Was it late?

A. It was 1.15 or shortly thereafter.

Q. Regular lunch time, isn't it?

A. It was slightly after lunch time.

Q. How many people would you say were in the restaurant at the time?

A. I did not make a count.

Q. All the tables were filled?

A. Well, I will say most of them were. Some people were standing, too.

[fol. 35] Q. How much was the bill at the restaurant for the food?

A. The bill was about 80 or 85 cents for both checks.

Q. Who paid the checks?

A. Mr. Michelson.

Q. While you were in the restaurant did you have any conversation with reference to Michelson's vacation having terminated that day?

A. Mr. Michelson made a statement that he had just returned from his vacation.

Q. Did he tell you that the whole jewelry district there on Canal Street took a vacation at the same time?

A. That I don't remember.

Q. You left the restaurant and then you started to walk in the direction of Christie Street, is that correct; toward the park?

A. Well, we ended up in the park. We didn't start walking directly towards the park. I am not too familiar with that neighborhood.

Q. How many blocks did you walk before you landed in the park?

A. About three or four, I would say.

Q. Is this a very large park on a very wide street?

A. That is right.

Q. Are there regular park benches in the park?

A. Yes.

Q. And did you sit on a park bench?

A. Yes, we sat on a park bench.

Q. And Michelson sat alongside of you?

A. That is right.

Q. Did you demand any money while you were sitting on the park bench?

A. I did not.

Q. Did you demand $1,000 from Michelson?

A. I never demanded any money from him.

Q. Were you sitting on the park bench with Michelson for about one hour?

A. No.

Q. How long did it take you to walk from the park bench to Michelson's place of business?

A. Well, at the rate we were walking it would take about eight or nine minutes.

[fol. 36] Q. So you were in the restaurant for about a half hour?

A. That is right.

Q. And it would take you eight or nine minutes to return from the park to Michelson's store?

A. That is right.

Q. And altogether you were out about one hour and three-quarters; is that correct?

A. That is right.

Q. Well, that would leave you with a full hour in the park?

A. Approximately, including the walking time.

Q. It would leave you fifteen minutes of walking time, wouldn't it?

A. Yes, that is right.

Q. Did he attempt to hold you in any form or in any manner while you were in the park?

A. No, he did not.

Q. Did he have his hand on your sleeve?

A. No, I don't believe he did.

Q. Did he have his hand on your arm?

A. No.

Q. During this period were you expecting the accountant to come into Michelson's store?

A. Prior to 1 o'clock I was expecting him. Mr. Michelson had told me he would be there at twelve when I saw him on the previous day, on the 16th.

Q. Now, you did consent to take $1,000 at one period, did you?

A. That is right.

Q. And will you tell us when that was?

A. That was just before we left the park to return to his place of business.

Q. That was on July 17th?

A. That was on July 17th; that is right.

Q. Wednesday?

A. That is right.

Q. Just what expressions did you use in giving the consent?

Mr. Pittoni: I object to the form of the question.

Q. Tell us what was said.

Mr. Pittoni: What was said; not a mental reaction.

[fol. 37] Q. Tell us what you said.

A. I simply said, "O.K."

Q. That you would take the money?

A. That is right.

Q. Did you take any money?

A. I did not.

Q. After you said, "O.K., I will take the money," did you return to 74 Bowery?

A. That is right.

Q. And you did some more work?

A. That is right.

Q. Did you upon your return demand $800 while you were in the store?

A. I did not.

Q. It was then that you claim that $800 was dropped at your feet?

A. A package was dropped at my feet. Mr. Michelson said $800 was in the package.

Q. Could you see money from the package?

A. No.

Q. Was it entirely covered?

A. It was entirely enclosed.

Q. And you picked up this money from the floor before you left the premises?

A. As I left I picked it up and returned it to Mr. Michelson.

Q. You say it was laying there for a couple of hours or at least an hour?

A. An hour or so, under my desk.

Q. Was it near your bag?

A. No, don't believe so. It was near my feet. The bag was on the other side of the desk.

Q. Did you have your foot on it at any time?

A. No, I did not.

Q. How far away from your feet was the package?

A. Well about a foot, I would say. About 12 inches.

Q. And before you left, around 4 o'clock, you picked up this package?

A. That is right.

Q. Could you feel that there was money it it?

A. I don't know if it is possible to feel there is money in a package when it is wrapped around with a piece of paper. I couldn't feel it and say there was money in it.

Q. You took that——

A. And gave it back to Mr. Michelson.

Q. Did you hand it to him?

A. No. I put it on a shelf behind the counter.

[fol. 38] Q. And you said, "I don't want it"?

A. "I am not interested" I told him.

Q. Did the tax return show the name of the firm where he kept his brokerage account?

A. No, it did not.

Q. On July 17th it was a very hot day?

A. It must have been, in the middle of July.

Q. Were you in the restaurant and in the park in your shirt sleeves on that day?

A. It could be possible. I might have been.

Q. Did you have a conversation with Michelson with reference to your wife and child? Will you tell us what that was?

A. I didn't have any conversation about my wife and child.

Q. Did you mention those words at the first trial?

A. The only connection in which I mentioned it was when I told Mr. Michelson that I didn't want to get involved with him, that I had a wife and child to worry about. That was about the only connection in which I might have mentioned it to him.

Q. When was that said? Was it on the 17th?

A. That was said after I left his store on the way home.

Q. On the 17th of July?

A. On the 17th. That is right.

Q. You were leaving his store about 4 P. M. on July 17th?

A. It was after 4. It was almost 4.30. About 4 o'clock I finished my examination and shortly thereafter I attempted to leave the store.

Q. You completed your work at four?

A. That is right.

Q. And you went toward the gate at his counter to leave and that is the point where you say he held you?

A. He did not hold me. He barred the way out to the gate.

Q. He blocked the exit?

A. That is right.

Q. Just standing in front of the gate?

A. Yes.

Q. You were on the inside and Michelson was on the outside?

A. He was on the inside, too.

[fol. 39] Q. Both of you were on the inside?

A. That is right.

Q. But he was standing up against the gate and he would not let you go through?

A. I did not try to force my way through. I just stood there.

Q. You did not want to stand there, did you?

A. I told him I wanted to leave.

Q. But you did stand there for about twenty minutes?

A. About twenty minutes; that is right.

Q. And during the entire period of that twenty minutes you wanted to leave the premises all the time?

A. Certainly.

Q. After you left the premises on July 17th after 4 P. M. you say the defendant followed you out to the street?

A. That is right.

Q. Talking to you?

A. Yes.

Q. Was something said about $5,000 on the street?

A. He asked me if I would take $5,000.

Q. That is after you left the store?

A. As we were walking down the street.

Q. How far away from the store were you?

A. About two and half blocks.

Q. You say the figure reached $5,000?

A. That is right.

Q. And were you walking towards your office?

A. No; towards the I. R. T. subway.

Q. Is that away from 253 Broadway or toward 253 Broadway?

A. My office is not at 253 Broadway.

Q. Is it going towards 165 Broadway or away from it?

A. 165 Broadway is southwest——

Q. Were you going downtown?

Mr. Pittoni: Let him finish.

A. I was going west along Canal Street towards the I. R. T. subway station.

Q. You did say at some point on the street as you were walking with him you would accept $5,000?

A. That was the end of the conversation.

[fol. 40] Q. Did you say that or not?

A. I did.

Q. And that is after you left his place of business?

A. That is right.

Q. And you were on your way home or to your office?

A. That is right.

Q. I show you Government's Exhibit 1, which is your card bearing a telephone number written in pencil, Gr.

3-4372, and ask you when did you give that card to the defendant (showing card to witness)?

A. I gave this card to the defendant just before we parted, while we were standing out on the street.

Q. That is on July 17th?

A. That is on July 17th.

Q. After 4 P. M.?

A. That is right.

Q. Where did you write the number? What did you lean on?

A. I believe I leaned on my bag.

Q. With your knee up on the sidewalk?

A. That is right.

Q. In the middle of the street, or in the middle of the sidewalk?

A. On the side of the street. Not in the middle of the sidewalk.

Q. And you gave this card to Michelson?

A. That is right.

Q. With your home telephone?

A. That is right.

Q. You saw this card before, didn't you, here last December?

A. Yes, sir.

Q. I produced this card, didn't I, on December 8th or December 9th?

Mr. Pittoni: I object to that.

The Court: Overruled.

Q. Well, did I or didn't I? Did I produce this card at the first trial?

A. I guess you did.

Q. And that was the first time you saw this card since you gave it to Michelson?

A. That is right.

[fol. 41] Q. Did you make any report to your office immediately after you left Michelson's place?

A. No.

Q. Did you make any report on July 17, 1946?

A. Not to my office, no.

Q. Did you telephone to anybody in your office with reference to this matter?

A. No.

Q. Did you get in touch with any of your superiors on July 17th?

A. Not on July 17th.

Q. You say you did talk to an older agent named Rubinstein?

A. That is right.

Q. And that was on July 18th?

A. That was the following day.

Q. That is a Thursday; right?

A. That was on Thursday; that is right.

Q. Thursday, July 18th. Who was Rubinstein?

A. Rubinstein is one of the older agents in my squad.

Q. He was there a longer period of time?

A. That is right.

Q. When did you talk to him for the first time with reference to this matter?

A. On July 18th.

Q. At what time?

A. About 3 o'clock in the afternoon.

Q. Was that the first time you spoke to anybody about the case in your office?

A. Yes, sir.

Q. Where was Rubinstein when you spoke to him? Was he in the office or was he outside?

A. He was in the office.

Q. Did you report to the office on July 18th at 10 o'clock or 9 o'clock?

A. No.

Q. What time did you report there?

A. About 8.30.

Q. 8.30 in the morning?

A. That is right.

Q. How long did you remain in your office on July 18th?

A. About a half an hour.

Q. Did you make up a sheet for the day as to where you would be that day during that half hour?

A. That is right.

Q. And that is in accordance with your regulations, isn't it?

A. I beg your pardon?

[fol. 42] Q. Is that in accordance with the regulations of your department?

A. Will you repeat your prior statement, please?

Q. You make up a sheet or a form where your superiors can tell from hour to hour where you are during the day?

A. Not from hour to hour. They know what assignment we are working on.

Q. You did not make up a daily sheet before you left the office?

A. Showing what?

Q. Showing where you will be during the day.

A. We report what cases we will be working on during the day.

Q. During the current day?

A. That is right.

Q. So that someone in the office will know where you are at all times during that day; right?

A. Well, they will know what cases we are working on. The intention is not to know where we are any minute of the day, because we may leave and go on another case for some reason.

Q. They can tell from this sheet at what address you are working?

A. That is right.

Mr. Pittoni: I object, your Honor. It has already been answered.

Q. Did you put anything on the sheet that morning with reference to this bribe?

Mr. Pittoni: I object to that. He himself said the sheets speak for themselves.

The Court: I will let him answer, but Mr. Castellano is now making competent what I ruled out before, if he is aware of that.

Mr. Castellano: I withdraw the question.

Q. It was not until 3.30 on the day of July 18th that you spoke to anybody connected with your department with reference to this case?

A. At approximately that time.

[fol. 43] Q. And at that time you had already given Michelson your personal Treasury card with your home telephone number on it?

A. That is right.

Q. And it was on the following day, July 19th, that you met Agent Yung?

A. Right.

Q. And from that time on you worked under his instructions?

A. Right.

Q. He told you about every move that you were to take?

A. Regarding Mr. Michelson's case, that is right.

Q. And did he also tell you what you should say to Michelson when you called him up?

A. That is right.

Q. And did he also tell you what you should say to Michelson when you get to the hotel?

A. That is right.

Q. And when you were talking with Michelson at the hotel you knew the hearing device had been set up?

A. That is right.

Q. And you carried out your instructions from Agent Yung when you were at the hotel?

A. That is right.

Q. And everything you said to Michelson was said by you at the request of Agent Yung?

A. No, not everything.

Q. Not everything?

A. No.

Q. Was most of your conversation with the defendant made in the manner and under the direction of Agent Yung?

A. That is right.

Q. You had a telephone conversation on July 26th, which was a Friday, when Mr. Yung was present; you called up the defendant; do you remember that?

A. I do.

Q. During the course of that conversation do you recall saying the following to the defendant: "I told him the only reason why I had agreed to take any money was because he insisted upon it."

A. That is right.

Q. And you said that after you had made your arrangements with Agent Yung?

A. That is right.

Q. And he told you just what to say over the telephone?

A. That is right.

[fol 44] Q. And he was present when you were saying it?

A. That is right.

Q. And at the hotel you said to the defendant: "You understand I am only doing this because you insisted on it"; is that right?

A. That is right.

Q. And the defendant, you say, answered, "Yes"?

A. Right.

Q. And that was also in accordance with your instructions from Agent Yung?

A. That is right.

Q. When you were appointed in November, 1945, did you take an examination?

A. Yes.

Q. Was it written or oral?

A. Oral.

Q. Who examined you?

A. Three representatives; one from the Civil Service Commission, one from the office of the Internal Revenue Agent and one from the office of U. S. Intelligence.

Q. Did they question you with reference to income tax matters?

A. Whose income tax matters?

Q. At this examination were you examined with reference to your qualifications on tax matters?

A. No.

Q. Just on your personal qualifications?

A. No, on that only.

Q. You were never asked any questions with reference to your knowledge about income tax matters?

A. No, we went to a school where we were taught about income tax matters.

Q. You went to school after you were appointed?

A. That is right.

Q. Where did you go to school?

A. At Columbia University.

Q. Does the Treasury Department run that school?

A. That is right.

Q. For how many weeks did you go to school?

A. About ten weeks.

Q. So you took a ten-weeks course?

A. That is right.

[fol. 45] Q. After your appointment, were you paid during those ten weeks?

A. We were.

Q. What was your initial salary?

A. $70 a week.

Q. Would it average about $3690 for the first year?

A. That is right.

Q. At the present time you receive about $4300 per year?

A. Yes, something like that.

Q. During your instructions at Columbia did you receive any instructions on renegotiation of war contracts?

A. Yes.

Q. And its relationship to income tax matters?

A. That is right.

Q. Did you receive instructions on bribery cases?

A. No.

Q. None whatever?

A. No.

Q. Did you ever have a bribery case before?

A. No, never did.

Q. This is the first time?

A. That is right.

Q. At this time you were in the service about six months?

Mr. Pittoni: I object to the question, not specific enough. At this time, what does that mean? What time is that?

Q. You were appointed November 8, 1945?

A. That is right.

Q. And this arrest arose July 29, 1946, correct?

A. Right.

Q. Are you required to make a daily report of your activities to your office?

A. We are required to make a daily report of the cases that we are actively engaged on.

The Court: And that is all, is that right?

The Witness: That is right.

[fol. 46] Q. Does the daily report set forth the time of arrival and the time of departure from the places where you are on that day?

A. No, it does not.

The Court: How could it, Mr. Castellano?

Mr. Castellano: I will let the exhibit speak for itself.

The Court: I do not care what they have on the paper. How could he possibly be able to say the minute he arrived at taxpayer No. 1's place and the minute he had left tax-

payer No. 1's place, and the minute he arrived at taxpayer No. 2's place and the minute he had left there? I mean, is it important?

Mr. Castellano: No.

Q. I will show you Government's Exhibit 2. Those are daily reports for July 16, 1946, and July 17, 1946, is that right?

A. That is right, they are.

The Court: Are these rendered after the service?

The Witness: These are rendered on the morning of the day following on which they are a report of.

The Court: Those are in retrospect?

The Witness: Also in anticipation. We mark down the appointments that we have for the current day.

The Court: I am not clear on that. This report for July 16th, which is part of Government's Exhibit 2 is that prepared on the morning of the 16th?

The Witness: On the morning of the 17th. You will notice the upper half—it is in two parts. The upper half reports the activities on that day, on the day indicated on the top; and the lower half indicates the anticipated activities for the current day, in other words, the appointments that we have.

The Court: All right.

[fol. 47] Q. Are these the two same exhibits that I introduced in evidence at the trial on December 10th?

Mr. Pittoni: I object to that.

The Court: What reason is there for that?

Mr. Castellano: I just want to show that at the first trial I demanded them and offered them.

The Court: I do think that we are rather overemphasizing the fact that there has been another trial. I have already told the jury that it isn't any concern of theirs after all. Is that clear, members of the jury? All right.

Mr. Castellano: But I do want to show that at the other trial——

The Court: Mr. Castellano wants me to tell the jury that Mr. Castellano offered these papers in evidence at the last trial.

Now, does that satisfy you, Mr. Castellano?

Mr. Castellano: Yes, your Honor.

The Court: Now, can we try this case?

Mr. Castellano: Yes, your Honor.

Q. I show you this yellow sheet with the telephone number in pencil Gr. 3-4372, and ask you if you wrote that number there?

A. I did.

Mr. Castellano: I offer it in evidence.

Mr. Pittoni: No objection.

(Marked Defendant's Exhibit B in evidence.)

Q. Did you ever give your home telephone number to a taxpayer whom you were investigating on any other occasion?

A. No.

Q. This is the first time?

A. That is right.

Q. At the time you gave it to Mr. Michelson you were not acting under any instructions from Mr. Yung?

A. Not from Mr. Yung, no.

[fol. 48] Q. You examined the 1942 and 1943 returns of this defendant, correct?

A. That is correct.

Q. And you only had the original of the 1943 return?

A. That is right.

Q. Did you have the original of the 1942 return available to you?

A. Well, it probably was available; it required to be requisitioned. But ordinarily we do not requisition a 1942 return if it isn't given to us with the 1943 return.

The Court: If it is not what?

The Witness: We do not ordinarily requisition the 1942 return if it does not accompany the 1943 return when it is assigned to us, because of certain techincal changes in the income tax law to be "Pay as you go" basis. That was the year that the change was made, and 1942 and 1943 were combined into one taxable year.

Q. If you were going to examine one you would have to examine the other?

A. That is right, both years were examined but the tax was computed by making a combination of the two years for the one year 1943 to put it on a pay as you go basis.

Q. And you found the defendant Michelson had paid his tax for 1942 and 1943?

A. As reported on his tax return.

Q. As far as you know he didn't owe a dollar to the Government?

A. Officially there is no record as far as I know.

Q. At one time you worked for Hafer, Baran & Golub, certified public accountants?

A. That is right.

Q. And you left that firm to work for the Government?

A. That is right.

Q. Tell us what your salary was while you were employed by Hafer, Baran & Golub for the year 1945?

A. For the year 1945 I was receiving $65 a week.

Q. Did you receive a gross of $7500 for that year?

A. Pardon me, it was $75 a week for 1945.

[fol. 49] Q. Did you receive a gross income from this firm for the year 1945 of $7500?

A. That is right, including expenses, yes.

Q. Did you receive a gross income of $5,000 a year for the year 1944?

A. That is approximately correct.

Q. You are married?

A. I am?

Q. Does your wife work?

A. Not now, no.

Q. She did work until June, 1945?

A. June, yes, approximately June, 1945.

Q. And she hasn't worked since?

A. No.

Q. Did you maintain charge accounts in 1945?

A. We had one I believe.

Q. Did you maintain a charge account at Altman's?

A. That is right.

Q. Did you maintain a charge account at Best & Company?

A. I believe that was opened in 1946.

Q. When did you close it?

A. They are still open.

Q. Have you used them?

A. Certainly, they are used monthly.

Q. In 1946?

A. That is right; particularly Best & Company.

Q. Best & Company?
A. That is right.
Q. You discontinued the other account?
A. No, it is actively used to this day.
Q. Where do you reside?
A. At 20th Street and Fourth Avenue
Q. You call that Gramercy Park?
A. That is right, No. 8 Gramercy Park.

Mr. Castellano: That is all, Mr. Kratter.
The Court: Any redirect?
Mr. Pittoni: Just a few questions, your Honor.

[fol. 50] Redirect examination.

By Mr. Pittoni:

Q. Mr. Castellano asked you whether your wife was working any more and you said no. When did she stop working?
A. In June, 1945.
Q. For what reason?
A. Well, she just stopped working.
Q. When was your child born?
A. In May, 1946.
Q. Mr. Castellano asked you a question about whether you knew whether there was any money due and owing by the defendant on his income tax. From your examination of July 17, 1946, could you tell whether there was some money due and owing to the United States Government on his income tax?

Mr. Castellano: I object to that, your Honor.
The Court: Sustained.
Mr. Pittoni: He asked the question.
The Court: I know. I sustain that objection, members of the jury; because we are not trying the case of whether this man does or does not owe tax, and it does not lie in the mouth of either counsel to argue that he does or he doesn't. Is that clear? And neither of them is going to argue to that effect.

Mr. Pittoni: May I respectfully move to have Mr. Castellano's question stricken out along that line, may it please your Honor?
The Court: I strike it.

Mr. Pittoni: Thank you.
The Court: With exception to the defendant.

Q. Is there any particular reason why you told Mr. Michelson that you would accept $1,000 when he offered $1,000?

Mr. Castellano: I object to that.
The Court: Sustained.

[fol. 51] Q. Is there any particular reason why you said you would accept the $5,000 when he said he would offer you $5,000?

Mr. Castellano: The same objection.
The Court: Sustained.
Mr. Pittoni: That is all.
The Court: All right, step down.

(Witness excused.)

The Court: Members of the jury, we will take a recess until 10.45 on Monday morning, and you will please as I told you not discuss the case amongst yourselves or try to form any opinion, it is too early.

(Adjourned to Monday, January 6, 1947, at 10.45 o'clock A. M.)

Brooklyn, New York,
January 6, 1947.

APPEARANCE: (As before noted.)

Trial Continued

The Court: I would like to take this opportunity to say to the jury that by reason of certain personal considerations if we do not finish this case today, when we recess today we will recess until Wednesday morning. So that you will have tomorrow off and you may make such arrangements today as to get the most out of it.

All right, Mr. Pittoni.

[fol. 52] ALVIN E. BETTS, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Pittoni:

Q. Mr. Betts, you are connected with the Narcotic Bureau?

A. Yes, sir.

Q. During the course of your duties do you from time to time set up or install what we call listening devices?

A. Yes, sir.

Q. And on the 29th day of July, 1946, did you accompany Agents Yung, Geary, Sherry and others to the Hotel St. George, Brooklyn?

A. I did.

Q. Was that the morning of July 29, 1946?

A. Yes, sir.

Q. Tell us what you did after you got to the Hotel St. George.

A. I went up to Room 36 with the listening device and the receiver and we went to Room 31 and installed a listening device. We went back to Room 36 and tuned in the receiver and Agent Teats and Agent Kratter went to Room 31 and had a conversation. I could hear the conversation on the receiving device. We had it all set up for operation. Then there was a phone call made——

Q. Wait a minute now. You had the listening device set up and you say you tested it?

A. Yes, sir.

Q. After it was tested did Agent Teats come back into Room 36?

A. Yes, sir.

Q. The way it was set up while in Room 36 could you hear the conversation which was going on in Room 31?

A. Yes, sir.

Q. Was that the only room in which conversation could be heard from Room 36?

A. Yes, sir.

Q. What time of the morning was this, Mr. Betts?

A. We arrived at the St. George about 10.30, around 10.30. We had the set ready for operation around 11 o'clock, I would say.

Mr. Pittoni: Your witness.

[fol. 53] Cross-examination.

By Mr. Castellano:

Q. Mr. Betts, was there any recording device set up in Room 36?

A. Recording device?

Q. Yes; a phonograph record.

A. No, sir.

Q. Just a loudspeaker?

A. Yes, sir.

Q. Did you receive your instructions as to what to do from Agent Yung?

A. I don't receive any instructions from Agent Yung. I work for the Bureau of Narcotics and we just operate the set. We have no other duties to perform.

Q. But you went over to the hotel with Agent Yung?

A. That is true, yes.

Q. And Agent Yung is with the Treasury Department?

A. That is right.

Q. And your services were being borrowed by the Treasury Department on this occasion?

The Court: He is in the Treasury Department.

Q. I mean the Income Tax Division of the Treasury Department?

A. We were being borrowed. We were to set up the listening device and receiving set and operate it.

Q. When you got over to the hotel to Room 31 and Room 36 did Mr. Yung tell you what to do?

The Court: It is perfectly obvious what the fact is, I think. (Addressing witness) You knew you were going there to set up a listening device; is that right?

The Witness: Yes, sir.

The Court: And you had been given some instructions from your superior to that effect; is that right?

The Witness: Yes, sir.

The Court: And Mr. Yung did not tell you what to do or how to do it, did he?

[fol. 54] The Witness: No, sir.

The Court: You knew that; you have been doing it for many years, have you?

The Witness: Yes, sir. If he knew how to do it he would not require me to do it.

Q. You set up a receiving device under a pillow, didn't you?

A. We put a listening device on the head of the bed and put a pillow on top.

Q. Did you do that at the suggestion of Mr. Yung?

A. No.

Q. Did you set up a table near the listening device?

A. Near the listening device? Yes.

Q. Did you pull a chair over near the table?

A. Yes.

Q. Did you do that at the request of Mr. Yung?

A. No, sir.

Q. At the request of Agent Kratter?

A. No, sir.

Q. You set that up yourself?

A. I didn't set it up. Agent Sherry put the table there and the chair himself. I didn't have anything to do with it.

Q. The chair was placed so that someone would sit there and speak into this listening device?

A. No, sir.

The Court: The table and chair were put there so that you could take notes?

The Witness: Yes, sir. You could stand in any part of that room and hear the conversation from the listening device.

Q. Did you set up two chairs near the listening device?

A. No.

Mr. Pittoni: May I interrupt? Which room is Mr. Castellano talking about?

Mr. Castellano: Room 31.

[fol. 55] The Witness: As soon as I set up the listening device in 31 I went out of the room. I had nothing to do with placing the furniture in any part of the room at all.

Q. All right.

A. Is that all, sir?

Mr. Pittoni: That is all.

EDWARD V. SHERRY, called as a witness on behalf of the United States, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Pittoni:

Q. Mr. Sherry, you are a Special Agent of the Intelligence Unit, is that correct?

A. Yes, sir.

Q. Treasury Department?

A. Yes, sir.

Q. On Monday, July 29, 1946, you also accompanied the other agents of the Government to the Hotel St. George?

A. Yes, sir.

Q. And were you in Room 36 on the morning of July 29, 1946?

A. Yes.

The Court: Isn't that July 19th?

Mr. Pittoni: No, your Honor. This is the last day now.

The Court: Oh, all right. You were there on that day?

The Witness: Yes.

The Court: In 36?

The Witness: In Room 36.

[fol. 56] Q. Were you present when this transmitting and listening device was being set up?

A. Yes.

Q. Afterwards, later on in the morning do you know whether Agent Kratter was left in Room 31?

A. Yes.

Q. Were you thereafter in a position to observe who went into Room 31 besides Mr. Kratter?

A. No, sir.

Q. While you were in Room 36 listening in did you take any minutes?

A. I took notes of the conversation.

Q. Are you a stenographer?

A. Yes.

Q. But you are an agent rather than a stenographer, is that correct?

A. Yes.

Q. Did you hear the conversation which went on in Room 31 by listening in Room 36?

A. Yes.

Mr. Castellano: Objection; it doesn't appear he knows who was in the room.

The Court: He didn't ask him that. He asked him did he hear a conversation. Objection overruled.

Mr. Castellano: Exception.

Q. Did you record that conversation?

A. Yes.

Q. Do you know who was in that Room 31 as you were recording the conversation?

Mr. Castellano: He has already answered that, your Honor.

The Court: I will let him ask it again. Do you know?

The Witness: Agent Kratter and a gentleman I later found out was Mr. Michelson.

The Court: How could you possibly find out it was Mr. Michelson?

The Witness: I had heard the conversation when Mr. Kratter called Mr. Michelson on the phone from that room and made the appointment, and I later found out it was Mr. Michelson.

[fol. 57] The Court: Did you later hear Mr. Michelson talk in your presence?

The Witness: No, sir.

The Court: You never did?

The Witness: No, sir.

The Court: All right. All you heard was a voice that you recognized as that of Mr. Kratter and another voice?

The Witness: Yes, sir.

The Court: Which so far as actual firsthand knowledge you couldn't identify?

The Witness: No, sir.

The Court: All right.

Q. Did you see whether Mr. Michelson went into Room 31?

A. No, sir.

Q. Did Mr. Michelson at any time tell you he had been in Room 31? This is Michelson now.

A. No, sir.

Q. Do you know who the other person was in Room 31 with Mr. Kratter?

Mr. Castellano: Objected to. He has already answered that.

The Court: Sustained: You have record evidence who was in the room at the time in the shape of the testimony of Kratter.

Mr. Pittoni: Yes, your Honor, but——

Q. About what time of the morning did you take these minutes that you heard from Room 31 in Room 36?

A. From my memory about 11.45. I could tell you exactly from my records.

The Court: All right, refresh your recollection from your records.

The Witness: Approximately 11.53.

[fol. 58] The Court: You commenced taking?

The Witness: That is right.

The Court: When did you cease taking?

The Witness: I am sorry, I have no record of it. It would be about, possibly ten minutes or maybe a little longer.

The Court: Were these notes that you hold in your hand the only conversation that you recorded on that day?

The Witness: Yes, sir.

The Court: And after you terminated the taking of those notes you dismantled the apparatus?

The Witness: Well——

The Court: Or the other agents did it in your presence?

The Witness: Yes.

The Court: All right.

Q. Were you able to take everything down which you heard in that room, Room 31?

A. I would say no.

Q. You say no, what did you take down, what parts?

A. At the start of it it was rather fragmentary. If I may say why, we had this set set up there with a table for me. The receiving set was at my left ear, and at the start of it I was getting it fragmentarily, and my left ear is not quite as good as my right ear. So finally I wound up down on the floor right in front of it, and I got it a little better. So there was possibly some parts that I did not get.

The Court: That was at the beginning of the conversation until you got yourself settled?

The Witness: That is right.

Q. But whatever you heard you put down in the stenographic minutes?

A. Yes.

[fol. 59] Q. And did you thereafter transcribe those stenographic minutes?

A. Yes.

Q. Have you got the transcript here in court today?

A. Yes.

Q. And this transcript is a true and correct transcription of the notes that you took on the morning of July 29, 1946?

A. Yes, sir; that is right.

Q. Have you got that transcript here?

A. Yes (producing paper).

Mr. Pittoni: I offer the transcript in evidence.

Mr. Castellano: It is highly improper, your Honor; it is objectionable on two grounds——

The Court: Don't say highly improper.

Mr. Castellano: Well, one ground is that the witness has testified he did not know who was in the other room and, secondly, it is not a true transcription——

The Court: In other words, your first objection is it is not connected with the defendant?

Mr. Castellano: That is right.

The Court: That I overrule on the basis of Kratter's testimony, with an exception to you.

Mr. Castellano: Exception. And, secondly, the witness has testified it isn't a complete record of what transpired in Room 31.

The Court: That objection I overrule on the ground that the weight of it is for the jury, with an exception to you.

Mr. Castellano: The record of the conversation is not admissible itself, if your Honor please.

The Court: Perhaps not. On that ground I sustain the objection. We will simply have the exhibit marked for identification.

(Marked Government's Exhibit 4 for Identification.)

[fol. 60] The Court: Now, will you take that exhibit, Mr. Sherry, and refreshing your recollection from it will you tell us what was said in that room?

Mr. Castellano: I further object on the ground that this conversation was not in the presence of this witness.

The Court: I overrule it on that ground.

Mr. Castellano: Exception.

The Court: If you are right on that you never can use this method of investigation.

Now, Mr. Sherry, refreshing your recollection from the transcript tell us what was said.

The Witness: First, Mr. Kratter said "Hello, O.K., come on up." I have that at approximately 11.53 A. M. Then at 11.56 A. M., the first thing I got was Mr. Michelson saying the word, "Complicated", and Mr. Kratter said, "What?"

Then Mr. Michelson said, "I say—complicated." Now there were some other things said. I just got down snatches of it at the start.

Then the next thing I heard was Mr. Michelson saying, "Then I took some money—taxes—do you get the idea—to give $200 and then I would put it in as income. Everything is there, you see." And another thing he said—"there's certain big amounts that he also gave me credit for that—in the beginning—you know this? I mean, that's the way." You see I am giving the conversation between Mr. Michelson and Mr. Kratter. There is probably some of Mr. Kratter's answers in here that I haven't got. I mean that is the way I got it.

"I mean, that's the way I do business. But naturally I don't want you to give me a thousand—you see, I have to give the Government—I don't know— they didn't take $850 I was supposed to give them. I mean I owed them $850. So they didn't take that out, and in my statement [fol. 61] I had a little bit more, and then I looked on the sheet. I seen on the sheet—I went to a friend of mine and I said, 'Help me out.'

"So what I say is this: I don't want you to hang yourself—I don't want to hang myself—that's what I want. I think I am being fair."

Then Mr. Kratter said, "You are the one that's paying."

"Michelson: You see, what he wants—that taxes—that's the 1942.

"Kratter: Well, this is too important——

"Michelson: No, he said it looks like——

"Kratter: I mean this isn't important the way it appears right now—it will come up later.

"Michelson: It doesn't have anything to do with this business right now?

"Kratter: As I told you before——

"Michelson: Well, listen——

"Kratter: You insisted that I do something.

"Michelson: Yes.

"Kratter: And in fact you wouldn't let me go unless I promised.

"Michelson: Well, naturally.

"Kratter: I tried to get away from you—I wouldn't touch it—I wouldn't handle it, but I figured I would work with you. On what you want to pay in excess of the sum—whatever you set it's got to be, but you set the figure.

"Michelson: Certainly. I figured we should make it like it's for both years. This is separate, only you should make it $1,200, and the other year $900—that would be very fair.

"Kratter: That's the whole story.

"Michelson: Yes. To tell you the truth, if they told me I wouldn't have to pay anything I wouldn't even start [fol. 62] it, because if it's not now, it's again somebody would put on the heat.

"Kratter: My examination was just a routine examination, but that's the chance you take—you know that.

"Michelson: You showed me you had a letter. What's the letter?

"Kratter: I couldn't locate you, so I sent the letter in which I asked you to bring your books and records up to my office. You see, I didn't know where your place of business was. I had to make a search of these second-hand dealers' licenses. You see, the letter I sent you came back unknown. I also sent a letter and it came back unknown at that address.

"Michelson: I told you what it is—the people I live with—they want that little apartment that I have, and what they did to me, it's a shame. They make me feel disgusted. When you are asked to leave the apartment, and you have to move out. They jumped me up the rate. I came back from the country—I was sick—it was, you

know, like manure, smelled up. They came over to me and said, 'Give me another $5, until that shortage goes off'—so I imagine whatever comes there they just ship back. But this is understood—the Government could always find me. Nobody wants to hide himself.

"Kratter: O.K.—well, that's all.

"Michelson: That's all. Here's your five.

"Kratter: O.K."

That is the end of the conversation with Michelson and Kratter.

Mr. Pittoni: Am I to assume that the document is not in evidence which he has just been reading from?

The Court: I sustain the objection to the introduction of the document, but the witness could use the document to refresh his recollection.

[fol. 63] Mr. Pittoni: All right, thank you very much. Your witness.

Mr. Castellano: May the record appear that the witness has read from the document?

The Court: Yes, let us be realistic about it. When you take stenographic notes that is about the only way you can refresh your recollection, isn't it?

Mr. Castellano: True.

Cross-examination.

By Mr. Castellano:

Q. Mr. Sherry, have you taken shorthand notes for some period of time? How long have you been taking shorthand notes?

A. Oh, since way back in 1907.

Q. Do you do it daily?

A. No, sir.

Q. How often do you take notes?

A. For some years back very infrequently.

Q. And when you refer to the name Michelson in your notes you do not know who that party is you have written down there as Michelson?

A. I do not write the names down in my notes, no, sir.

Q. When you refer to Michelson in there as you did several times——

A. Yes.

Q. You do not know who that party was that was talking on those occasions?

A. Only that I would hear a question answered, and I knew Mr. Kratter's voice, and I knew that the answer was in another voice——

The Court: Mr. Castellano means you are merely identifying this other voice as Michelson.

The Witness: Yes, that is right.

Q. But you do not know who that other voice is? You do not know who the other voice is?

A. My answer to that would be—may I answer that by saying I never saw Mr. Michelson until the morning that the first trial started?

[fol. 64] The Court: Yes, that answers it.

Mr. Castellano: Then I move to strike out the entire testimony of the witness.

The Court: I grant your motion—oh, you mean strike out the entire testimony?

Mr. Castellano: That is right.

The Court: I deny that. I deny that.

Mr. Castellano: Exception.

The Court: I thought you meant the last answer as irrelevant, something like that.

You see the situation, ladies and gentlemen. We have certain rules of law and I am required to rule as we go along. That does not mean I favor one side as against the other. I am ruling according to my likes on the admission of evidence.

Here is the situation: This man did not see Mr. Michelson and had never his voice before. All he heard was Kratter's voice, which he knew, and another voice. Now, it is for you to say whether that other voice belonged to Michelson, or it will be ultimately when the case is given in your charge.

Redirect examination.

By Mr. Pittoni:

Q. Mr. Sherry, Mr. Castellano asked you whether you had been doing stenographic work in the last few years, and your answer was infrequently in the last few years, is that correct?

A. That is right.

Q. But you also testified that you started doing stenographic work in 1907?

A. That is when I first started studying.

Q. Between 1907, and say more recent years, did you do much stenography?

A. Between 1907 and more recent years?

Q. Yes.

A. I did it every day from 1907 on up until just before the first World War, 1917. And then I was away from it for [fol. 65] a number of years, and I started back again just ten years ago. I took an examination for stenographer in the Federal Government, and I placed No. 1 with 104, 99 and five service points, in Pennsylvania. That was ten years ago.

Mr. Pittoni: That is all.

(Witness excused.

Owen Burke Yung, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Pittoni:

Q. Mr. Yung, you are a Special Agent of the Intelligence Unit, Treasury Department?

A. Yes, sir.

Q. And you have been such a Special Agent since 1941?

A. Since April 1, 1942.

Q. Previous to that you were with the Treasury Department; is that correct?

A. Yes, sir.

Q. Now, your duties as Special Agent, Intelligence Unit, are to investigate alleged violations of the Treasury laws?

A. Investigate and prepare for prosecution all frauds upon the Treasury Department.

Q. You are the agent in charge of the investigation of this case; is that correct, sir?

A. Yes, sir.

Q. Do you remember Agent Kratter being brought to your room in the Treasury office on Friday, July 19, 1946?

A. Yes, sir.

Q. Did you have a conversation with Mr. Kratter that morning?

A. I did, sir.

Q. And at that time did you give Mr. Kratter certain specific instructions?

A. I did.

[fol. 66] Q. The following Monday, July 22nd, 1946, did Mr. Kratter come to your office in the Treasury office again?

A. Yes, sir.

Q. Was that the morning of July 27, 1946?

A. Yes, sir.

Q. And at that time did Mr. Kratter make a telephone call in your presence?

A. Yes, sir.

Q. What number did he call in your presence?

A. Canal 6-8640.

Q. Did you hear the conversation, at least Kratter's part of the conversation, with the party on the other side of the line?

Q. At that time did you give Mr. Kratter any further instructions?

A. I did.

Q. Now let us move on to Friday, July 26, 1946. Did Mr. Kratter come to your office that morning again?

A. Yes, sir.

Q. Did he make a telephone call in your presence?

A. Yes, sir.

Q. Was that telephone call to Canal 6-8640?

A. Yes, sir.

Q. Did you hear the conversation that morning?

A. Yes, sir.

Q. Did you give Mr. Kratter certain instructions that morning?

A. Yes, sir.

Q. Now let us move on to July 29, 1946, Monday. Now tell us in your own words what you did, what you saw and what you heard from Mr. Michelson, if anything?

A. On July 29, 1946, about 10 A. M. together with Special Agents Sherry, Geary, Narcotic Agents Teats and Betts and Revenue Agent Maurice Kratter, I proceeded to the St. George Hotel in Brooklyn and proceeded to rooms 31 and 36, which rooms I had previously engaged. In room 31 there was installed a listening device by the narcotic

agents and a receiving set for this listening device in room 36. At about 11.50 A. M. Revenue Agent Kratter, in my presence, made a telephone call to Canal 6-8640 and [fol. 67] had a conversation. At about shortly thereafter, with Special Agent Geary, I searched the room, room 31, where Revenue Agent Kratter was to meet the defendant Michelson, and then searched the person of Revenue Agent Kratter. He had about $61.59 on his person. I then left Revenue Agent Kratter alone in room 31 and returned to room 36, where I kept room 31 under observation. At about 11.55 A. M. there was a telephone call received in room 31. I heard Kratter hold a conversation. Approximately two or three minutes later I observed a man I now know to be Solomon Michelson, the defendant, approach the door to room 31. I heard a knock on the door. The door was opened. I heard the defendant Michelson say "This is a complicated room to find." I heard Kratter say, "What?" The defendant Michelson replied, "This is a complicated room to find." I then heard Agent Kratter ask the defendant Michelson, "Is everything there?" And I heard the defendant Michelson reply, "Yes. It is in the bag." There was then quite a bit of general conversation and I heard the defendant say to Kratter that he wanted to pay $900 on his 1942 income tax return and $1200 on his 1943 return. There was other general conversation, some of which I observed special Agent Sherry recording, and I then heard Kratter say, "Well, I guess that is about all then," and I approached the door of Room 31, together with Special Agent Geary. The defendant Michelson came out of Room 31——

Q. Excuse me a moment. Have you finished all the conversation you heard in Room 31?

The Court: Which he heard while he was in Room 36.

Q. While you were in Room 36, the conversation you heard in Room 31.

A. There was some other conversation and at one point I heard Revenue Agent Kratter say to the defendant Michel- [fol. 68] son, in effect, "You know the only reason I am doing this is because you insisted upon it; isn't that right?" And I heard the defendant Michelson reply, "Yes, that is right." As Agent Geary and I approached Room 31 the defendant Michelson came out of the room followed by

Revenue Agent Kratter. I observed under Revenue Agent Kratter's left arm a package and I could see currency protruding. I approached the defendant Michelson and informed him I was a Federal officer and showed him my credentials. I asked what he was doing there and he did not reply. I directed him to go back to Room 31, and he went back and sat in a chair close to the window. I then asked the defendant Michelson if he had given Kratter any money and he said, "Yes." I said, "Where is it?" And the defendant Michelson said "He has it" (indicating Revenue Agent Kratter). I then asked Agent Kratter in the presence of defendant Michelson, "How much money was there?" And Kratter replied, "$5,000." I then turned to the defendant Michelson and said, "Is that right?" And he said, "Yes." I said to the defendant Michelson, "What did you give him the $5,000 for?" And he said, "I will tell that to the proper party." I said, "As a Special Agent of the Intelligence Unit I am considered a representative of the Commissioner of Internal Revenue and you can therefore tell me why you gave him $5,000." He refused to answer except saying he would tell it to the proper party, and I said, "I will let you tell that to the United States Attorney." I then brought the defendant Michelson to the Federal Building in Brooklyn, where he was fingerprinted and photographed, and then took him to the office of Assistant United States Attorney Pittoni. Mr. Pittoni informed the defendant Michelson that he need not answer any questions that might tend to incriminate him or degrade him, that he could refuse to answer any such questions, that anything he might say could be used against him or [fol. 69] also for him. I then informed Assistant United States Attorney Pittoni of the circumstances surrounding the arrest of the defendant Michelson, following which Assistant United States Attorney Pittoni asked the defendant Michelson if he had anything to say. The defendant Michelson said, "Anything I could say would only hurt me." Together with Agent Geary, we then counted the money in the presence of the defendant and determined it to be $5,000 in cash. I turned to the defendant Michelson and said, "Is this the same $5,000 which you gave Revenue Agent Kratter?" And he said, "Yes." Mr. Pittoni again warned him against answering any questions that might incriminate him, and then I said to the defendant

Michelson, "Where did you get this money?" And he said, "I took it from my safe."

Q. I show you this——

The Court: May I ask a question?

(Addressing witness). When you went from the door of 36 to the door of 31, how much ground did you cover, about?

The Witness: That is two rooms away.

The Court: And Michelson was emerging from the door?

The Witness: Yes, sir.

The Court: Mr. Kratter was at the door?

The Witness: Yes, sir.

The Court: Was there anyone else in the room at all?

The Witness: No, sir.

The Court: When you left 36 you could still hear the conversation going on; is that right?

The Witness: Yes, sir.

Q. Did you keep Room 31 under observation all the time that Mr. Michelson was in there?

A. I did, sir.

[fol. 70] Q. You saw him go in?

A. I did.

Q. You saw nobody else go in?

A. No, sir.

Q. And the only persons who came out were Kratter and Michelson?

A. Yes, sir.

Q. At what time in the morning did Mr. Michelson go into Room 31?

A. At about 11.55.

Q. About what time did Mr. Michelson come out?

A. At about 12.10 P. M.

The Court: 12.10?

The Witness: Yes, sir.

Q. I show you a brown package, all sealed and initialed. Will you tell us what that package is?

A. This is the $5,000 in cash which I took from the defendant Michelson in Room 31 of the St. George Hotel.

Q. Is that the money which you showed to Mr. Michelson from time to time on July 29, 1946?

A. Yes, sir.

Q. After you showed that money to Mr. Michelson in my room what did you do with the money?

A. Do you want this opened?

Q. Open it up, please.

A. After Mr. Michelson identified this money in Mr. Pittoni's office, it was sealed in his presence. It was then kept in a safe deposit vault in New York until the time of the previous trial, after which it was again resealed by Court Clerk Scott in my presence.

Q. Where was that package kept in the meantime from the previous trial?

A. In the safe deposit vault of the Irving Trust Company of New York.

Q. Is today the first time you are opening it since the last trial?

A. Yes, sir.

Q. Take that money out.

Mr. Pittoni: I offer the $5,000 in evidence, your Honor.

[fol. 71] (There being no objection the $5,000 received in evidence and marked Government's Exhibit 5.)

Q. In what denominations is this money?

A. Fives, tens and twenties.

Mr. Pittoni: Your witness.

Cross-examination.

By Mr. Castellano:

Q. The first time you met Kratter in connection with this case was on July 19, 1946?

A. Yes, sir.

Q. That was a Friday?

A. Yes, sir.

Q. And from that time on you took charge of the entire matter?

A. Yes, sir.

Q. Including all its details?

A. Well, as much detail as could properly be taken care of.

Q. For instance, there was a telephone conversation by Kratter to Michelson alleged to have taken place on July 26th.

A. On July 26th?

Q. Yes, from your office.

A. Yes, sir.

Q. And you were present at the time Kratter called Michelson?

A. Yes, sir.

Q. Did you on that occasion tell Kratter what to say?

A. No, sir. Would you like to know what I told him?

Q. No. I just asked you that question. At the hotel on July 29th you supervised the layout of the two rooms?

A. What do you mean by "supervise"?

Q. Did you give instructions as to where certain instruments were to be placed?

A. In general, yes, sir.

Q. And where chairs were to be placed?

A. In Room 31 I think we moved one chair.

Q. And that is the chair that you wanted Kratter to have Michelson sit in?

A. No. One chair was already in the room close to the window and there was a small table alongside of it, and the other chair was across the room. So we moved the [fol. 72] one chair so that the two chairs would be close together and the conversation would be equal.

Q. Did you tell Kratter in which chair he should sit?

A. No, I don't believe so.

Q. Did you tell Kratter what he should say?

A. Only in general.

Q. Did he follow out your instructions on that occasion?

A. In general, yes, sir.

Mr. Castellano: That is all.

Mr. Pittoni: Now, if it please your Honor, I have another witness, Mr. Geary, Intelligence Unit, and he would testify in corroboration of Mr. Yung.

The Court: Mr. Pittoni says that if called Mr. Geary would corroborate Mr. Yung.

Mr. Pittoni: Do you want me to put him on?

Mr. Castellano: There is no necessity of calling him.

The Court: Have you anything to suggest about it?

Mr. Castellano: He does not have to call the witness. It may be stipulated the record may show he would testify in corroboration of Agent Yung.

Mr. Pittoni: To the same facts?

The Court: That Mr. Geary's testimony would substantially corroborate that of Mr. Yung.

Mr. Castellano: That is right.

The Court: Thank you, Mr. Castellano.

Mr. Pittoni: That being the case, I rest at this time.

The Court: I will excuse the jury for ten minutes.

(The jury withdrew from the court room.)

[fol. 73] The Court: Mr. Castellano, I have excused the jury because I expect you are going to go into questions of law. Is that all right with you?

DEFENDANT'S MOTION FOR DIRECTED VERDICT

Mr. Castellano: Yes, sir. The defendant moves for a directed judgment of acquittal upon the ground that the Government has failed to establish the charge in the indictment beyond a reasonable doubt; upon the further ground the Government has failed to establish intent as charged in this indictment, on both counts. The indictment reads that $5,000 was paid to an officer and a person acting for and on behalf of the United States in an official function under the authority of the Treasury Department, to wit, Maurice M. Kratter, Internal Revenue Agent, with intent to influence his decision and action on a question and matter then pending before him in his official capacity, with intent to influence said Internal Revenue Agent to collude in and allow a fraud on the United States and to induce him to do an act in violation of his lawful duty in respect to the defendant's income tax returns. That seems to be a third intent. Your Honor has already ruled this is not a tax case and there is no evidence whatever in this case showing that the defendant owes the Government any money for income taxes. So there could be no intent to defraud the Government as alleged in the second intent in this indictment. You have a variance between the proof and the pleading.

The Court: The fact that on the face of the return the defendant owed nothing would not necessarily indicate that in fact he owed nothing. There is evidence in the record to the effect that Michelson suggested to Kratter that he show $1200 due for 1943 and $900 due for 1942. It is not my function to say that is believable or not, nor is it my function to draw inferences from it, but I would suspect it is ground for an inference that Michelson was trying

to influence Kratter in the performance of his duty. It might be ground for an inference that he was trying to [fol. 74] defraud the Government, particularly in the light of his conduct with Kratter at the time of his meeting with him in the park, if Kratter is to be believed. I have now no opinion as to whether, having pleaded its intent in the conjunctive, the Government is bound to prove each and every item, but on the supposition that they only have to prove one of those intents and without analyzing it in great detail, I believe there is evidence from which the jury could infer that at least one of those intents was demonstrated, namely, the intent to influence Kratter, an agent of the Government, in his official capacity. I think I would be depriving the jury of its function to grant your motion on that argument. You have an exception to all of this and you do not agree to anything I say, I — not specifically correcting any error I may be making.

Mr. Castellano: On one issue your Honor has referred to, in reference to the amount he paid, Kratter already testified as far as he knew Michelson did not owe a nickel.

Mr. Pittoni: No.

Mr. Castellano: Your Honor struck out that testimony later.

The Court: I now reverse myself and I allow that testimony to remain.

Mr. Castellano: The damage has already been done before this jury.

The Court: I am going to tell the jury that on the question of the believability of Kratter's story that he was approached by Michelson that they are not to try the issue of whether or not Michelson owes money, but they may take into consideration that on the face of the return, according to Kratter, there is nothing shown to be due.

Mr. Castellano: But aside from the face of the return Kratter made the flat statement he had no knowledge of any amount due from the defendant to the Government.

The Court: Not quite that. He said he thought it had not been determined yet, or something like that. Here is [fol. 75] my problem: I am not going to permit Kratter or anybody else in a case of this character to say that Michelson owes $3450.92. I suspect the time for that has not arrived. Moreover, if it had arrived, while it might be admissible, I would rather not let it in.

Mr. Castellano: But your Honor already let in testimony of Kratter over my objection that he did owe $25,000 and there was $35,000 unexplained deposits in the defendant's stock trading account.

The Court: Not on any theory that was the fact, but on the theory that was what was said in the conversation.

Mr. Castellano: Later when the same witness testified he had no knowledge of the defendant owing the Government anything whatever, your Honor struck that out.

The Court: I now reverse myself and reinstate that testimony, but it still would not change the result so far as I am concerned. I am going to say to the jury again they are not trying Michelson for defaults in the payment of taxes. On the question of whether or not he attempted to bribe Kratter, they may take into consideration, if they believe it, Kratter's story about these unexplained deposits, and they may also take into consideration Kratter's statement that on the face of the return Michelson owed nothing; in so far as he knew, he owed nothing. As I said before at one stage of the case, let us be a little realistic about this thing. After all, Kratter is a Revenue Agent and, so far as I know, he has not been in the job of reconstructing this man's income. He is not in a position to say with authority that he has knowledge of defaults on the part of Michelson or deficiencies. Has he?

Mr. Castellano: Except he was allowed to create an atmosphere in the statement of unexplained deposits and his opinion that there was money due to the Government to the amount of $25,000.

The Court: Only because he said that was said to Michelson. If it was said that the moon was made of green cheese [fol. 76] it would not make it so, but it would make it competent as part of a conversation, and so I consider the evidence to be. Now, you have not finished your motion. I interrupted you.

Mr. Castellano: I think I have finished the motion. First, for a judgment of acquittal on the ground the Government has failed to establish a case beyond a reasonable doubt and, second, a judgment of acquittal on the ground of variance in that the Government has failed to prove the case as charged, with the three intents as charged in this indictment, as to each count.

The Court: I overrule you on both grounds, with an exception to you.

Mr. Pittoni: Your Honor, may I respectfully hand up to the Court a memorandum of law which sustains your Honor's ruling with respect to these three intents.

The Court: I have not made any ruling. I merely expressed off the record the opinion that when triple intent is pleaded, if the statement is in the disjunctive, proof of one would satisfy the requirement of sending the case to the jury and the others could be treated as surplusage if no proof was found.

Mr. Pittoni: May I respectfully hand up a memorandum which sustains that opinion, your Honor?

The Court: Yes.

(The jury returned to the jury box.)

The Court: Before you proceed, one minute.

Members of the jury, I do not want to be boresome or wearisome about this, but I want to call your attention to a couple of things. A motion to dismiss and for a verdict of acquittal has just been made and I have denied it for legal reasons. In the course of the trial as I have — to you before from time to time I have sustained or overruled objections. Those are questions of law that have nothing to do with you at all. And the fact that I have denied those motions doesn't mean that I have any opinion either way, [fol. 77] nor does the fact that I overruled or sustained an objection mean I have an opinion either way.

While I am on that subject I want to call your attention to the fact that on cross-examination the witness Kratter was asked a question substantially whether he had any knowledge, he himself had any knowledge of whether on the face of the return there was anything due to the Government from the defendant Michelson. You will remember the testimony; your recollection will govern if it differs from what I tell you. Now, Mr. Pittoni, in the light of something that took place later moved to strike out that answer, and I granted that motion. On reconsideration I have decided to let the answer stand.

What I want to say to you is what I have tried to say to you from the beginning. Do you give me your assurance you won't be influenced in the decision of this case by any of my rulings, do you give me that assurance? And that you haven't been influenced by any of my rulings?

The reason that I let that answer stand is this: We are not trying out the question of whether Mr. Michelson owes

any money to the Government or not, as I have said repeatedly that is not before you. But we are trying out the issue framed by the indictment here, whether he gave a bribe and whether he offered a bribe. But of course in considering the question of whether he gave or offered a bribe you may take into consideration everything that was said between him and Mr. Kratter, and you may also take into consideration for such weight as you may care to give it the fact that the witness Kratter has no personal knowledge of whether Michelson owes anything or not, and on the basis of the returns as filed by Michelson nothing was shown to be due. Is that clear?

Now we will proceed.

[fol. 78] SOLOMON MICHELSON, the defendant, called as a witness in his own behalf, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Castellano:

Q. Mr. Michelson, how old are you?
A. Fifty-six.
Q. Where were you born?
A. Austria.
Q. How long have you been living in the United States?
A. About thirty-six and a half years.
Q. What?
A. About thirty-six and a half years.
Q. Are you a citizen of the United States?
A. Yes.
Q. And have been for how long?
A. Over twenty years, around twenty years.
Q. What was your first occupation when you arrived in this country?
A. I was peddling with candy.
Q. Peddling?
A. Yes.
Q. Candy?
A. Yes.
Q. And how old were you at that time?
A. Oh, I was a young man at that time.

Q. Twenty-one?
A. Well——
Q. Did you go to school in this country?
A. No.
Q. Did you go to school in Europe?
A. A little bit, not much.
Q. Can you read English?
A. A trifle.
Q. Do you write?
A. Just a little.
Q. How long did you peddle candy?
A. About, maybe over a year.
Q. After that what did you do?
A. I went into novelty peddling, novelty jewelry peddling.
Q. For how long?
A. Quite some—about three years.
Q. Where do you reside?
A. 3152 Brighton 6th Street, Brighton Beach.
Q. How long have you resided there?
A. About five or six years.
[fol. 79] Q. Have you always resided in New York City and Philadelphia?
A. In Brooklyn and in Philadelphia.
Q. How long did you reside in Philadelphia?
A. About four years.
Q. And the rest of the time have you always resided in New York City?
A. In New York City, I mean in Brooklyn.
Q. In Brooklyn?
A. Yes.
Q. When did you start business at 74 Bowery, New York City?
A. 74 Bowery, I must have started about twenty or twenty-one, something like that.
Q. Were you at another place in the Bowery before you were at No. 74?
A. Before 74 I was in, I had a store for myself on Canal Street.
Q. What did you sell at that time?
A. Jewelry and watches.
Q. What business did you conduct at 74 Bowery?
A. Watches, diamonds and jewelry.
Q. You buy and sell?
A. Yes.

Q. Were you convicted of a misdemeanor charge in 1927?
A. Yes.
Q. In the Court of Special Sessions?
A. Yes.
Q. New York City?
A. Yes.
Q. And in that case did you pay a fine?
A. Paid a fine of $100.
Q. Will you tell us what the charge was?
A. I bought some diamond watch dials to be placed on different watches, and they claimed, whoever made that charge, claimed these are not genuine dials. To my knowledge I didn't know what those dials are, whether genuine or not, because I bought them in a place——

Mr. Pittoni: I object to anything further.
The Court: Let me hear the answer.

(Answer repeated.)

[fol. 80] The Court: Well, I suppose you want to prove, you are anticipating something, aren't you? I will overrule the objection. Go ahead, and tell us about the dials.

Q. Tell us what a dial is.
A. A dial is the——

The Court: A watch face?
The Witness: A watch face. The old, when the watch gets old they take off the old dial, throw it away and put a new dial on. I went into a certain place and I bought these two dials, and somebody came in and said, "These dials are not genuine," the dials which I purchased. And they gave me at that time a summons, and they gave several people summonses for the same kind of dials——
The Court: What happened?
The Witness: They took us to Special Sessions, and then the District Attorney over there said if I pay a fine——
Mr. Pittoni: I object to what the District Attorney said.
The Court: Yes, I do not think Mr. Castellano wants that. What happened, did you plead guilty?
The Witness: He told me that if I pleaded guilty I will pay $100 fine, and I didn't want to go any further——
The Court: So you pleaded guilty and paid the $100 fine?
The Witness: I pleaded guilty and paid the $100 fine.

The Court: All right, do not anticipate or try to, Mr. Castellano.

Q. Have you had any other trouble since you have been in the United States?

A. No, sir.

[fol. 81] Q. At any other time?

A. No, sir.

Q. Have you ever paid any money to any public official or any person for any unlawful purpose?

A. I never did.

Q. When did you meet Agent Kratter?

A. I met him—Mr. Kratter came into my place of business July 15th, it was on a Monday.

Q. 1946?

A. 1946.

Q. When he same into your place of business did he say anything to you?

A. He took out one of his cards and he gave it to me, and he asked me may I come in.

Q. I show you this card and ask you if that is the card he gave you on that occasion?

A. Yes, that was the card.

Mr. Castellano: I offer it in evidence.

Mr. Pittoni: No objection.

The Clerk: This has been marked previously as Defendant's Exhibit A.

Mr. Castellano: That is right, it is in evidence already as Defendant's Exhibit A.

Q. When he presented you with this card did he have a conversation with you?

A. He asked me if he could step into my place of business.

Q. Will you describe your place of business?

A. My place is a window and a small showcase about 4 feet, and then a big showcase about 7 feet.

Q. And that is part of the space in a large store?

A. It is part of the space on the left hand side of the store.

Q. Are there a great many other showcases there?

A. There is about twenty-four people in the place.

Q. Twenty-four individuals who are in business there?

A. Yes, some jewelers, some have the same business as I have.

Q. And what did Mr. Kratter ask you after he came in?

A. He asked me if he could come in, and I said, "Why not?" And he started in. He asked me if I had my 1942 return.

[fol. 82] Q. What did you tell him?

A. I told him that the returns are with my accountant, Mr. Osterfeld.

Q. Did he ask for anything else?

A. And he said to me, "Can I call up your accountant?" I said, "Why not?" And I gave him the telephone number, and I took the phone from the next counter which the man allowed me to use, and I gave it to him and he called up Mr. Osterfeld.

Q. Did he ask you for any books of record?

A. He asked Mr. Osterfeld if he could look at my books, and he asked him also for the 1942 return.

Q. Did Mr. Osterfeld have the 1942 return?

A. Mr. Osterfeld had the 1942 return.

Q. Did he ask you for any books or records after he got through with the telephone call?

A. After he got through with the telephone call he took off his jacket, and I hung it up for him on the side, and he took a little sheet. I have a chair and a little table there, and he took a sheet out. Then he said "Can I have the books?" I had those books on the bench, and I was making an attempt to give the books to him when he said, "Never mind."

Q. Did he ask for the ledger?

A. Then he says, "Let us see the ledger." And then I took the ledger and tried to give it to him, and then he said, "Put it right here," and right there I have a small little safe, and he said, "Put it on the safe."

Q. After you handed him the ledger what did he say to you?

A. He took a sheet, and then he bent down—he had a briefcase on the right-hand side, and he took out a yellow sheet of paper and he placed it on the table, and while it was lying there, I don't know what he was doing but he was writing on that sheet of paper. What he was putting on that sheet I didn't know, nothing at all.

Q. How long did he write on the sheet?

A. Maybe ten minutes, maybe a little longer, maybe a little less, I don't know exactly what time.

[fol. 83] Q. After that what did you observe?

A. Then he got up and said, "I want $800." I said to him, "For what ?" He says, he bent down and he took out a white envelope, and he held it in his hand and he said, "What I have here in this envelope I could call down the special agents of the F.B.I. and have you locked up immediately." And I was frightened.

Q. What did you do?

A. I went down to my small little safe and I took out $800. There were forty twenties, and I took a piece of paper and I wrapped it around the money and I handed it to Mr. Kratter. Mr. Kratter took the package and placed it on the right-hand side of the table.

Q. What time of day was this, Mr. Michelson?

A. That must have been about, close to, maybe ten minutes of one.

Q. He took the package of money?

A. He took the package of money, the $800.

Q. What did he do with it?

A. He placed it on the side, on the right-hand side on the table there, on the small table.

Q. What did he say about the F.B.I?

A. He told me he has a right to call down the special agents of the F.B.I. and have me arrested.

Q. At the same time was he holding an envelope in his hand?

A. He had a white envelope in his hand.

Mr. Pittoni: I object to Mr. Castellano's method of questioning the witness; he is putting words into the witness' mouth.

The Court: Mr. Castellano is not trying to lead him. He wants the whole conversation repeated, so you repeat it.

Mr. Castellano: That is right.

Q. Tell us what he was holding in his hand.

A. He bent down and put his hand in his briefcase and [fol. 84] he took out a white envelope and he held it in his hand, and he said, "What I have here in this envelope is enough," he says, to call down the special agents of the F.B.I. and have you arrested immediately."

The Court: He said the F.B.I.?

The Witness: The special agents of the F.B.I. he said.

The Court: Of the F.B.I., he said that?

The Witness: Yes.

The Court: You remember that?

The Witness: I remember that positively.

The Court: All right.

Q. Then you handed him a package with $800 in it?

A. I gave him the package, and he reached for the package, he took it and placed it on the right-hand side of that small table.

Q. Up to that time had he examined any of your books or records?

A. He did not make any attempt to. I had tried to give him the book: he had asked for the ledger and I had tried to give it to him and it was laying there on top of the safe.

Q. Did he open any books?

A. He did not open any books.

Q. Did he have any brokerage statement in front of him?

A. That happened later when he came back.

The Court: This all happened on July 15th?

The Witness: On July 15th, Monday.

The Court: In the forenoon?

The Witness: It was, when he got there, it was close to 12 o'clock.

The Court: And he left at what time then?

The Witness: For dinner or when he left at all?

The Court: You couldn't be mistaken on that date?

[fol. 85] The Witness: Not at all, because I just came back from a vacation. We had two weeks' vacation, all the jewelers in the entire block.

Q. Did all the jewelers in your block take a vacation for two weeks?

A. This last year they took a vacation for two weeks.

Q. That is in 1946?

A. 1946.

Q. When did you return from your vacation?

A. I returned from my vacation Sunday night, and I came into the place of business Monday around 11 o'clock.

Q. Were all the dealers in your store closed down during that period?

A. All those dealers in the whole block closed down for that two weeks' vacation.

Q. Where did you go on your vacation?

A. I went to South Fallsburg. It is really Walwich, but the man calls it South Fallsburg in order to elaborate the name of the hotel. The town is really Walwich.

The Court: In New York State?

The Witness: In New York State.

Q. How long were you there?

A. I was there for about two weeks.

Q. Can you give us the name of the place where you stayed?

A. Grand Central Hotel.

The Court: I do not think the place that he stayed on his vacation is so important, but the question of the date is.

Mr. Castellano: It fixes the date.

The Court: Yes.

Q. Then you came back Sunday night, July 14th?

A. That is right.

Q. On Monday morning, July 15th——

A. I came into my place of business.

[fol. 86] Q. At lunch time did Mr. Kratter go to lunch?

A. Mr. Kratter got up and he said, "I am going for lunch."

Q. About what time was this?

A. It was close to 1 o'clock.

Q. And did you go out to lunch?

A. I said to Mr. Kratter, "I am going out for lunch too."

Q. Did you both leave 74 Bowery?

A. We both left, Mr. Kratter was in his shirt sleeves.

Q. What did you do with the $800?

A. Before I left the place I just looked around, when I was outside of the showcase I looked on that small table and the money was not there.

The Court: It was not there?

The Witness: It was not on the small table, so I don't know if he pushed it down into the bag or it fell down on the floor, I don't know what he did with it.

The Court: You didn't see him take it?

The Witness: I didn't see what happened to this money.

The Court: You didn't see him place it in his pocket?

The Witness: I didn't see him put it in his brief-case, no.

The Court: So as far as you know you walked away from there leaving the $800 there?

The Witness: As far as I know when I walked out the $800 wasn't on the table.

Q. Where did you go for lunch?

A. We went across the street in a cafeteria.

Q. Did you both have lunch?

A. We both ate lunch together.

Q. Was the place crowded?

A. The place was crowded, it was full of people.

[fol. 87] Q. And you sat at a table?

A. We sat at a table there, yes.

Q. Were there other people at the table?

A. Yes, other people at the same table.

Q. And you sat there——

A. We sat opposite to one another.

Q. Were all the tables occupied?

A. All of the places were occupied, it is a busy place during that time, during the lunch hour.

Q. While you were in there having lunch did you see Mr. Osterfeld, your accountant, come in the place?

A. Mr. Osterfeld just stepped over to our table while we were sitting there, and then he walked away.

Q. When you came out did you pay your own check?

A. When we walked out I paid two checks, one for myself and one for Mr. Kratter; I paid 85 cents together.

Q. When you reached the sidewalk leaving the restaurant what happened?

A. I wanted to go back to my place of business, and Mr. Kratter said, "No, you go this way, walk this way toward the park."

Q. Towards Christie Street?

A. Towards Christie Street and Hester.

Q. How far away is that from the restaurant?

A. About a block and a half.

Q. Did you walk with him?

A. I walked with him together, yes.

Q. And he asked you to walk in that direction, is that right?

A. He told me to walk that way. I wanted to go back to my place of business, and he said, no, you walk this way.

Q. And you went along with him?

A. I went along with him.

Q. Did you reach Christie Street while you were walking there?

A. Yes, we ran into Christie Street and stepped into the park.

[fol. 88] Q. Did Mr. Kratter sit on a bench in the park?

A. He took a seat on the bench.

Q. Did you sit alongside of him?

A. Yes.

Mr. Pittoni: May I respectfully object again. I would rather have the witness testify.

The Court: Try not to lead him. Tell us everything that happened in the park.

The Witness: When we came to the park, Mr. Kratter sat down and then I sat down. And a few seconds later he said that he changed his mind. He said, "Now, you know now I want $1,000." I repeated and says, "For what?" And he started to threaten me with the agents of the F. B. I., and I was frightened.

The Court: What did you do after that?

The Witness: After that while he was sitting there he was telling me the story of his life, and he told me about his wife and kid, he has a wife and child, and he told me he couldn't get along, and all that stuff.

Q. What else did he say?

A. In about a few seconds later he said, "Oh, no, I will not take $1,000, I want $5,000."

Q. Did you say anything else at that time?

A. Well, I said, "What for?"

Q. And did he say anything else?

A. Well, he threatened me again with the F. B. I., with the special agents of the F. B. I.

The Court: Was he always talking about the F. B. I.?

The Witness: He always kept on threatening me.

The Court: About the F. B. I.?

The Witness: F. B. I. special agents. Even up to now I do not know what the F. B. I. special agents could do to me.

[fol. 89] The Court: But he was always talking about the F. B. I.?

The Witness: The F. B. I.

Q. Did he tell you he would have you arrested?

A. He told me he could have me arrested, he has the authority.

Q. He told you he would call the F. B. I.?

A. Yes.

The Court: Don't lead him. Tell us everything that happened.

Q. What did you say to him when he demanded $5,000?

A. I asked him for what, and he told me he has to adjust my tax statements. While we were sitting there about an hour, after that I got up and I started walking back to my place of business, and he followed me.

Q. Did you say you would give him the $5,000 in the park?

A. I told Mr. Kratter that I only have in my safe now $3,000.

Q. When did you say that?

A. That is when I came back from the park to my place of business. And he told me, "You had better get the $5,000 or else."

Q. What did you say?

A. I was frightened; I was trying to be as calm as I could be, and I couldn't.

Q. What did you say?

A. I said I haven't got the money.

Q. Did you walk back to your store?

A. I walked back to my place of business, and then I opened the door and Mr. Kratter stepped in.

Q. You mean the little gate?

A. In front of my showcase there is a little gate with a little lock inside, a little latch.

Q. And then when you returned to your place of business Mr. Kratter was with you?

A. Yes, sir, he was there.

Q. And he came in with you?

A. Mr. Kratter stepped in, and I went in after him. And [fol. 90] then Mr. Kratter sat down on the chair there, and he told me that he wanted to see the 1942 and 1943, the statements of my broker, which I bent down and I looked up the statement and gave it to him.

The Court: Then what happened?

The Witness: Then he looked over the statement and

he said to me, "Well, I think that I have, I will have to do a lot of work for you," he said. And then he was sitting there figuring, figuring again. I don't know what he was figuring, but he was there figuring on a sheet. He kept on writing on that sheet. What he was doing I do not know.

The Court: What happened next?

Q. How long was he there before he got finished that day?

A. He must have been there up to 3 o'clock.

Q. What time did you come back from the park?

A. From the park, that must have been, with the lunch and the park, I must have been, it must be about 2.30, up to that time about.

Q. How long were you out altogether from your place of business, considering the time that you were at lunch and the time you were in the park?

A. It must have been over an hour and a half.

Q. After you came back how long did Mr. Kratter remain in your place?

A. Mr. Kratter must have been there about thirty minutes, in my place after that.

Q. Before he left did he give you this card, Government's Exhibit 1?

A. Yes.

Q. Will you look at it?

A. Yes.

Q. Did you see him write on that card?

A. He took out this here card, and he just picked up a pad there and he placed the card on it, and he was writing on it that way. Why, he was doing that I do not know. He was writing down a telephone number. He wrote down Gramercy 3-4372, and he gave me that card.

[fol. 91] Q. Did he tell you what number that was?

A. He told me, "This is my home telephone number. When you have the money ready, just call me up and let me know."

Q. Did he tell you when to call?

A. He told me to call him about Friday, the 19th, July 19th before 6 o'clock, five minutes before six.

Q. Did you call him at that number?

A. I called him at that phone number. I called him before, July 19th at five minutes before 6 o'clock, and somebody answered that phone and said that Mr. Kratter was

just walking out, and he said to hold the phone and I will see if we can reach him. And somebody must have gone for him, and they came back and said after a few seconds, "I am sorry, I cannot find him any more. Do you want to leave a message?" I said, "No."

Q. Did you call Mr. Kratter any other time?

A. I did not.

Q. Only on July 19th?

A. July 19th, on Friday.

Q. Did you receive a call from Kratter?

A. I received from Kratter several calls the next week.

Q. Do you recall when you received the first one?

A. The first one must have been about the 22nd.

Q. That would be on a Monday?

A. On a Monday.

Q. Where were you, at your place of business?

A. I was at my place of business.

Q. Did you recognize his voice?

A. Yes.

Q. What did he say to you?

A. He told me if I have the money ready.

Q. What did you say?

A. I said I haven't got the money together yet. He said, "You had better get the money together or else," and he kept threatening me even on the telephone.

Q. After July 22nd did Mr. Kratter come to your place of business?

A. He came in one time for about a few minutes, but I don't remember what day it was.

[fol. 92] Q. But you do know it was after that telephone call of July 22nd?

A. Of July 22nd.

Q. During that week?

A. During that week.

Q. He came to your place of business?

A. He came to my place of business.

Q. How long did he remain in your place of business?

A. About a few minutes only.

Q. Did he talk to you?

A. Yes.

Q. What did he say to you?

A. He told me he is arranging for uptown in a hotel, that I should bring the $5,000 over there, and I objected to that.

Q. What else did he say when he visited you at the store?

A. He told me that you had better bring that money down, or else you know what I could do.

The Court: What do you mean you objected to the hotel?

The Witness: He told me I should bring the whole $5,000 to his hotel there uptown.

The Court: Did you say you wouldn't bring it there?

The Witness: I told him I am afraid to go there with $5,000 in my possession.

The Court: In other words, did you refuse to bring the $5,000, or did you tell him you didn't like the idea of a hotel?

The Witness: I told him I do not like the idea of a hotel.

Q. Then did you get a telephone call from Kratter after his visit?

A. I did.

Q. Give us the time.

A. It must have been around the 26th.

Q. Tell us what he told you on the 26th.

A. On the 26th he asked me again if I have the money, and I told him I just got the money together.

[fol. 93] Q. What did he tell you?

A. He told me he will call me up, he would call me up Monday and he will let me know where I could come down to see him.

Q. And this was on the 26th that you are referring to?

A. On the 26th.

Q. Did you receive any telephone call after the 26th of July?

A. I received a telephone call on July 29th at the time when I was arrested.

Q. What did he tell you on the telephone at that time?

A. He asked me if I have the money, and I said yes. He said, "You come down to Hotel St. George, Room 31." I told him, "How do I get there?" He said, "You take a cab, you will get there to the hotel."

Q. Did he tell you at that time in what form he wanted this money?

A. He told me I should have the money, the first time when he was talking about money, about the $5,000 sum, he told me he wants to have this money in fives, tens and

twenties. In other words, otherwise he said he can't take that money.

Q. Did you go to the Hotel St. George on July 29, 1946?

A. I took a cab and went there, and when I came there——

Q. Did you have with you this bundle of money?

A. Yes, I had the $5,000 with me.

Q. Did you telephone up when you got there?

A. I telephoned up and he told me to come up to Room 31, and I knocked on the door and then Mr. Kratter said come in.

Q. After you went into the door what did you do?

A. When I came in Mr. Kratter said sit down, and he asked me if I have the money, and I said yes. He said, "Let us have it." And I took the money and placed it on the table; there was a small table there, I guess.

Q. How long were you in the room with Kratter?

A. I must have been in the room about ten or fifteen minutes.

Q. What did you talk about in there, do you remember?

A. About many different things; I even spoke about my room, that I can't get no accommodations. I told him different things.

[fol. 94] Q. Do you remember being asked by Mr. Kratter a question, "How much do you want to pay the Government?"

A. He asked me how much do you want to pay, but I don't remember how much I told him.

Q. But you did deliver the $5,000 that he asked you to get?

A. Yes, I did.

Q. What happened, if you recall, to the $800 that you say you gave to Kratter on July 15th?

A. When he got up he sat down and he gave me back the money.

Q. What time of day was that?

A. That must have been before he left.

Q. That was on Monday?

A. Monday.

Q. July 15th?

A. July 15th.

Q. Where did he pick the money from?

A. Well, he had a brief-case on the right-hand side where he was sitting; if he took it out from the brief-case or

from the floor I do not know, but he picked it up and he gave it to me.

Q. Did Mr. Kratter say anything to you at the hotel about adjusting your tax?

A. Mr. Kratter said, "What do you want me to do?" And I told him, I said, "You know what you have to do." And then something else——

The Court: What did you mean by that, "You know what you have to do"?

The Witness: Well, he was threatening me that I owe money to the Government which I really didn't have no idea, even today I haven't got an idea that I owe any money.

The Court: What did you mean when you said, "You know what you have to do"?

The Witness: He asked me the question what do you want me to do. I said, "I don't know, you know what to do." I said, "You got the whole thing from me." I don't know what he wants to do.

[fol. 95] Q. Did you offer Kratter $100 on the sidewalk after you left the restaurant?

A. I never offered him any money, except I offered him $800, which he asked for, and I gave it to him.

Q. Did you ever offer $250 or $300 to Mr. Kratter?

A. Not at all, I didn't offer him one cent at that time.

Q. Did you ever offer him $1,000?

A. He asked for it, but I didn't give it to him at that time.

Q. Did you offer him any money at all in the park conversations?

A. I didn't offer anything at all, only he was asking for money. Mr. Kratter asked me for $1,000.

Q. Did he ever refer to the sum of $100, $250 or $300?

A. He never referred to any of that denominations.

Q. Did Mr. Kratter ask you to explain any deposits at any time on July 15th?

A. He looked at my broker sheets, and he saw some small little checks which I deposited onto the broker sheets; and he asked me what they are, and I told him that maybe, just like sometimes I exchange a check with somebody else and I put it in as a deposit.

Q. On July 15th when Mr. Kratter left your place of business did you go out in the street with him?

A. I did not.

Q. Did you walk with him, in other words, at all that day?
A. I did not walk anywhere.
Q. Did you remain in your store on July 15th?
A. Yes, I did.
Q. When he had completed his examination?
A. He did not make any examination on that day.
Q. When he got through on July 15th?
A. When he got through he left his business card and he said to me, "Goodbye", and he gave me that number and said I should call him up and tell him.
Q. What time do you say it was that he left?

The Court: Three o'clock, he said.
The Witness: Three or after three.

[fol. 96] Q. Did you leave the place with him?
A. I did not.
Q. Before Mr. Kratter left did you make any attempt to hold him in any manner inside the gate in your store?
A. No, I couldn't hold him, the entrance to where Mr. Kratter was going into my place is about 5 feet 5.

The Court: I don't think Kratter said that he attempted to hold him. I think he said he stood in his way.

Q. Did you stand in his way when he was about to leave?
A. I did not, I did not stand in his way.
Q. Did you hold Kratter at any time on July 15th while you were walking with him or over in the park?
A. No, I did not.

The Court: I do not think Kratter said he did.
Mr. Castellano: Kratter tried to create that impression.
The Court: We will let the jury remember what he said to him.

Q. When you were in the park with Kratter did Kratter tell you that he would not or could not return to the store without you?
A. He did not say anything.
Q. Did Mr. Kratter ever give you his home telephone number on a card on the street?
A. Not at all. He gave me the card Monday, about close to 3 o'clock, in my place of business, behind my showcase. He had a little table and that is the time he wrote out the card this way (indicating).

Q. That is the only time he gave you his telephone number?

A. That is the only time he gave me his telephone from his home.

Mr. Castellano: That is all.

[fol. 97] The Court: We may as well take a recess now. Members of the jury, we will take a recess, please, until 2 o'clock. You won't discuss the case amongst yourselves nor try to form an opinion until it has been given to you for decision.

(Recess taken until 2 o'clock P. M.)

Afternoon Session

Solomon Michelson resumed the stand, testified further as follows:

Cross-examination.

By Mr. Pittoni:

Q. Mr. Michelson, this morning, in answer to your attorney's question, you said you came back the night of Sunday, July 18th?

A. I did not say so.

The Court: July 14th.

Q. When did you come back?

A. July 14th, at night.

Mr. Pittoni: Excuse me. It is a matter of dates.

Q. You came back on Sunday night?

A. Yes.

Q. When you were away on vacation where did you stay?

A. At the Grand Central Hotel. That is called——

Q. Never mind. The Grand Central Hotel. Where is the Grand Central Hotel located?

A. It is located in Woodridge but the man calls it South Fallsburg.

Q. Is that the name of the hotel?

A. Grand Central, I think it is. Glick.

Q. Do you remember testifying at the last trial?

A. Yes.

[fol. 98] Q. Do you remember being asked these questions by your attorney, Mr. Castellano:

"Q. Are you sure this was July 15th?

"A. July 15th, Monday.

"Q. How do you fix that date?

"A. I came back from out of town in the morning and when I stopped in at the place it was after 11 and when I had my coat off"—I believe your attorney interrupted you. Now, which is correct?

A. Sunday night I came back from the country, and when I said in the morning I meant I came from the country. The only day that I was back from the country, that is what I meant.

Q. Do you remember saying, "I came back from out of town in the morning"?

A. I don't remember if I said that, but I meant that I came back from the country Sunday night and in the morning I came into my place of business, Monday morning.

Q. Do you remember being asked this question by your attorney:

"Q. From out of town? Where had you been?

"A. South Fallsburg or Walwich."

Mr. Pittoni: This is on page 109 of the previous testimony, your Honor.

Q. (Continuing:) "A. South Fallsburg or Walwich."

A. The man made a mistake——

Q. "This hotel used the name South Fallsburg to make it more impressive, or whatever it is." Now, which is correct.

A. Correct is Grand Central Hotel and Woodridge—the hotel is located near Woodridge.

Q. Just answer the question.

A. Yes.

Q. When did you leave New York to go on your vacation?

A. About two weeks ago.

The Court: You mean two weeks before——

The Witness: Two weeks before.

[fol. 99] Q. What date?

A. I can't remember the exact date, but all of us left at that time. The exchanges all closed.

The Court: Can you suggest the date approximately?
The Witness: About fourteen days before.
The Court: That would be July 1st.

Q. Was that on a Sunday, Sunday or Saturday or what?
A. Maybe it was Friday night or something like that.
Q. Don't you know?
A. I just can't recollect just the exact.
Q. Was your place of business open on Saturdays?
A. On Saturday? No.
Q. Are you married, Mr. Michelson?
A. Single.
Q. You are single?
A. Yes, sir.
Q. What is your home address?
A. 3152 Brighton 6th Street.
Q. When you were up on your vacation, Mr. Michelson, did you bring a lot of baggage with you?
A. I had one satchel. That is all.
Q. That is all?
A. Yes.
Q. When you came back from your vacation did you go back to your home or your store?
A. I went back to my home.
Q. So when you testified at the previous trial, then, Mr. Michelson, that you came back that Monday morning and went direct to your store, that was incorrect; is that correct?
A. I meant to state that I came back Sunday night and Monday morning was the first time——
Q. Did you at any time during that trial ever say you came back on Sunday night?
A. I did not. Maybe I did not explain it right.
Q. Now, how long does it take you to get back from South Fallsburg to Brooklyn or to New York?
A. It might take about five hours.
[fol. 100] Q. Five hours?
A. Five or six hours.
Q. How did you come back from South Fallsburg?
A. With a hacket.
Q. What is a hacket?
A. Those machines, those automobiles, they take you home.

The Court: A taxicab.

Q. What time did you leave Sunday night and what time did you get back to New York or Brooklyn?

A. It must have been after 8 o'clock.

Q. You got back when?

A. About 1.

Q. While you were away on vacation did you have $3,000 in your safe?

A. (No answer.)

Q. While you were away on vacation did you have $3,000 in your safe?

A. I had the money in the safe, yes.

Q. You kept it in the safe all the time while you were away?

A. Yes.

Q. Now, Mr. Michelson, in 1930 you made an application to the City of New York for the purpose of getting a second-hand jewelry license, a vendor's license; is that correct?

A. When?

Q. In 1930.

A. I have a license much before.

Q. Did you make an application for a renewal of your license in 1930?

A. I make it every year.

Q. Every year. Would you recognize your signature if you saw it?

A. Yes, sure.

Q. Will you look at that photostatic copy of that (showing photostat to witness).

Mr. Castellano: I do not see how this is material to this inquiry here.

The Court: Well, we will have to see.

A. Where is the signature?

[fol. 101] Mr. Pittoni: May I step in and show it to him, your Honor?

The Court: Show it to him.

Q. Is that your signature (indicating)?

A. Yes.

Q. That is your signature?

A. Yes, sir.

Q. Now, on this application here there is a question, "If applicant has ever been arrested or summoned for any

offense, such facts must be stated in full, giving number of times and final disposition." Then underlined here it says, "If none, state so," and you have got the word "No" there; is that correct?

Mr. Castellano: I object to that and move to strike it out.

The Court: Why?

Mr. Castellano: The question is improper on the issues presented here.

The Court: Oh, no.

Q. You put that word "No" there?

A. I didn't put anything, because there is a certain agent who gives the bond.

Q. You put nothing on there, then?

A. He comes in and makes out all the questions and everything and tells me to sign. Every year he does that.

The Court: Was the answer on when you signed it?

The Witness: I didn't see that.

Q. When you made this application for a license in 1930 you did not put on there, did you Mr. Michelson, that on March 24, 1927, you were convicted of counterfeiting trademarks on watches and that you were sentenced to pay either $100 or 30 days in jail? You did not put that down, did you?

[fol. 102] Mr. Castellano: Your Honor, that is not the charge in that case. Possession of counterfeit.

The Court: Sustained on that ground.

(Addressing witness) You did not say in that paper that you had been arrested and that you were convicted of that dial charge?

The Witness: I have a letter from the Commissioner of Licenses which he questioned that here and I answered it and I think Mr. Castellano must have my letter there, and the Commissioner O. K'd—he said it is nothing; it is O. K.

Q. Where do you usually keep your books and records in your place of business?

A. At my place of business I keep it right open.

Q. Your books and records are always right open?

A. Yes, it is on a slide in the window.

Q. Let us see, in answer to your attorney's question this morning you told us certain facts as to what happened on

the morning that Mr. Kratter came in for the first time. What day do you say that was?

A. July 15th.

Q. That is the first time that you ever saw Mr. Kratter in your life?

A. The first time I saw him.

Q. And that is the day that you say he came in around 12 o'clock?

A. Close to 12 o'clock.

Q. Then around 1 o'clock you and he went to lunch?

A. Yes.

Q. Then around some time after 2 you came back from lunch and walking through the park, is that right?

A. Yes.

Q. And that is the day when you say he left you somewhere after 3 o'clock, is that right?

A. Yes.

Q. What did Mr. Kratter do when he came in, reconstruct that picture in your own words, Mr. Michelson?

A. When he came in he took a seat on the chair next the [fol. 103] table, and then he told me, "Let us see your books, statements from 1942 and 1943."

Q. Yes. Go ahead.

A. And he looked at them.

Q. Yes.

A. And then he had a piece of paper, and he was writing on that piece of paper, I don't know what, and then he said, "You have some little checks there," and he said if I could explain, and I said no.

Q. Go ahead, what happened after that?

The Court: Did you show him the broker's statements when he first came in?

The Witness: After dinner I showed that to him.

The Court: Mr. Pittoni was asking you what happened when he first came in.

Q. I want you to reconstruct the picture between 12 and 1. Go ahead.

A. I didn't get you.

Q. Even though it is repetition, you go ahead.

A. He came in close to 12 o'clock. He showed me his card, one of his cards, and he asked me if he may come in, and

I said why not. And I opened that door for him, and he stepped in.

Then he asked me for the 1942, my return for 1942 and I told him I haven't got it with me. He said, "Where is it?" I said, "My accountant has it."

Then I gave him the telephone from my next neighbor, next door neighbor. I picked up the telephone, the receiver, and I said, "You could use this phone and call up Mr. Osterfeld, he works for LaPrensa." And he calls up Mr. Osterfeld, and asked him for the 1942 return. And he asked him if he could look at my books.

Then he turned around to me, he hung up and he said it is O. K., he told me that I could see your books.

Q. Yes.

A. He took a seat. Then I made an attempt, I went over to give him the books, and he said, "Never mind." He said, "Show me your ledger." I picked up the ledger and took [fol. 104] it over to him. There is a small safe next to my table, and he said, "Place it on that safe." I placed the ledger on the safe. He was taking out, he took out a yellow sheet of paper and he placed it on the table and he started writing. What he was writing I do not know at all.

All of a sudden he got up, he says, "I want $800." And I says, "For what?" And he says, "You better come across with $800, otherwise I could call the F. B. I. in on you." And I was really frightened.

The Court: He said the F. B. I.?

The Witness: The special agents of the F. B. I., he said. And I was really frightened. I bent down to my safe, and I took out $800, 40 20s, and I took a small piece of paper and put it around. You could see the money on both sides. And I handed it to Mr. Kratter, which Mr. Kratter took and placed on the table on the right-hand side.

Then he was sitting there for a few minutes, and then he got up and said, "I am going for lunch." I says, "I go for lunch, too." So we both went out for lunch. I first turned around and looked over my showcase on the table, and I didn't see the money. I don't know if he put it in the briefcase or he throwed it on to the floor, I don't know, but I didn't see the money on the table. And we walked over across the street in the restaurant.

Q. All right, let us stop at this point. Did he ask you for the books in the morning before you went to lunch?

A. He did.

Q. Did he ask you for the books the moment that he walked in?

A. The moment he walked in, he came in and he says, he wants to see my 1942 statement, I mean the income tax return. That is what he asked me.

[fol. 105] Q. You say that he asked to telephone your accountant also that same morning?

A. I gave him the telephone.

Q. He asked you to give him the accountant's telephone number, is that right?

A. I gave him the telephone number to call up.

Q. Did he say he wanted to speak to your accountant?

A. Yes.

Q. Subsequently did he talk to your accountant?

A. He did talk to my accountant.

Q. You say after he talked to your accountant, and after he asked your accountant for the books, and after he told your accountant who he was there in your place of business, you say then after that he demanded the $800. is that right?

A. I can't get you.

Q. Let me start all over again. You say he telephoned your accountant, is that right?

A. Yes.

Q. You say he asked your accountant for permission to look at your books?

A. Yes.

Q. Then after he finished talking to your accountant for a few minutes, after that he turned to you and he said, "Give me $800?"

A. I beg your pardon, you are just trying to get me wrong.

The Court: No, no. Answer the questions now.

The Witness: No, it is not so.

Q. How long after he spoke to your accountant did he demand $800?

A. He demanded $800, it must be about 15 minutes later.

Q. At any rate it was after he spoke to your accountant, is that correct?

A. That is correct.

Q. Now, do you remember your testimony at the last trial?

A. I do.

Q. Page 98, do you remember being asked this question:

"Q. What did he say then?

A. When he got in, it was July, a hot day, he took off his [fol. 106] jacket. I hung it on the side. There are racks, I hung up his jacket. I have a small table with a chair, and Mr. Kratter sat down and he said, 'Let me see your books'."

Is that correct?

A. I did not mean it that way.

Q. You now say he asked you to look at your broker's statement?

A. I didn't say that either.

Q. (Continuing:) You are speaking now, "The books were laying on a bench there. I wanted to give him the books and he said, 'Never mind.' He said, 'Let me see your ledger.' He said, 'Place the ledger on the safe.'"

Is that correct?

A. That is correct.

Q. Continuing without a break: "He was taking out a yellow sheet of paper, whatever he was writing I do not know, and all of a sudden he got up and he says to me, 'I want $800.'" I says, 'For what?' He says, 'I have so much on you I will put you away in jail right away.'"

A. That is correct, but he took out an envelope and showed it to me like this (indicating). He didn't let me look at it.

Q. Up until this time you hadn't heard him telephone your accountant at all, had you?

A. Up to this time, he called up before.

Q. You testified again at the previous trial, page 115:

"Q. About what time did you go to lunch?

A. It must have been close to one.

"Q. Before or after one?

A. Before one.

"Q. So you say he came to your business close to 12 o'clock, and close to 1 o'clock you and he went out to lunch?

A. Yes."

So far is that correct?

A. He went out, and then I went after him——

Q. Wait a minute. So far is that correct?

A. Yes.

Q. "Q. And meantime he introduced himself to you as an Internal Revenue Agent?

A. He gave me his card.

"Q. Then he started to look at your books?

A. He did not look at the books.

[fol. 107] "Q. He did not look at the books?" This is still on the same page.

"A. No, he only asked for the books. I made an attempt to give them to him. He said, 'Never mind.'"

Is that correct?

A. That is correct. He just say, "Let use see my books," and then he says, "Never mind."

Q. "Q. And that is when you say, between twelve and one, he said, 'I want $800'?

A. He sat down and said, 'Let us see the ledger.'

"Q. Yes, go ahead.

A. I handed him the ledger, and I had a small safe next to the table. He placed it there, and he did not look at the ledger.

"Q. He did not look at the ledger?

A. No.

"Q. He said, 'Give me $800'?

A. He didn't say that, he said, 'I want $800'."

Q. I am reading from your previous minutes.

A. That is O.K., anybody could make a mistake——

The Court: Please don't make any comments.

The Witness: I do not, but——

The Court: Well, don't.

Q. "Q. Now you say you gave him $800? What did he do with the $800?

A. He took the money and placed it on the side toward the wall on the little table.

"Q. How long after that did you go to lunch?

A. About ten minutes later."

A. That is correct.

Q. During all those minutes, all that testimony that you have given at the previous trial, did you at any time mention having talked to your accountant over the telephone, or Mr. Kratter talking to your accountant over the telephone?

A. He did just when he came in——

The Court: No. At the last trial did you mention that?

The Witness: I must have mentioned that.

The Court: So far have you heard any mention of it in your testimony that Mr. Pittoni read?

[fol. 108] The Witness: Yes.

The Court: Have you?

The Witness: I must have mentioned that, because that is the way it was.

Q. Let us see. You say this man Kratter, this young fellow Kratter, whom you never saw in your life before, came into your place of business, and within a short while after he was there he shook you down for $800, is that what you say?

A. I gave him $800. He said, "I want $800."

Q. Yet at 1 o'clock when he said he was going to lunch you said you would go with him?

A. I said I will go for lunch too, I didn't say "with him."

Q. But when you walked into the restaurant he sat down at a table, is that correct?

A. We went both over to the counter——

Q. He sat down to a table, is that right?

A. Yes.

Q. And you followed him and sat down with him, correct?

A. We both sat at the same table.

Q. After you finished your lunch you offered to pay the lunch of the man whom you say shook you down for $800, is that correct?

A. I paid his lunch; I didn't say I offered to pay it, I paid it.

Q. You grabbed the check?

A. I picked up both checks, not one check.

Q. That is the man whom you say shook you down for $800?

A. Demanded $800.

The Court: But Mr. Pittoni means then you bought him lunch.

The Witness: Whenever people come into our place of business we always——

The Court: No. I mean on that day.

The Witness: On that day, if it would be a different gentleman I would also pay his lunch; if he goes for lunch and I go for lunch I pay his lunch.

[fol. 109] The Court: Whether he asks you for a bribe or not?

The Witness: This man had me entirely dazed, I didn't know what I was doing.

Q. This store that you have got at 74 Bowery, you are the tenant in that store, are you not?

A. What?

Q. You are the tenant?

A. I am also the tenant, and I also own the contract.

Q. You sublet?

A. It is not I, the corporation sublets.

Q. You are the president?

A. I am not the president, I am only an officer.

Q. You own stock in the corporation?

A. There are two partnerships in this business which we took the lease for.

Q. Is that you and Aronoff?

A. You and Aronoff?

Q. I mean you and Aronoff.

A. Michelson and Aronoff.

Q. Even though it was summer, in July on a hot summer day, there were a lot of people in that store?

A. Not quite a lot of people, not a lot of people; there is always people in there.

Q. There were at least five or other people there besides yourself?

A. You can't get in 500 people there.

Q. Five people, I said.

A. Where, in that store?

Q. Yes.

A. There is always more than thirty or forty or fifty people, not five people.

Q. So you say with all those people around Mr. Kratter came in there and demanded $800 from you?

A. When he was in my place of business, on my side.

Q. How wide is that store?

A. 25 feet.

Q. How long is it?

A. 75.

Q. Now, you say that towards the end of the meeting with Mr. Kratter he asked you for $5,000?

A. That wasn't towards the end, that was in the park.

Q. In the park?

A. Yes.

[fol. 110] Q. You say Mr. Kratter asked you for $5,000?

A. First he demanded $1,000. He said, "I don't want $800, I want $1,000."

Q. Do you remember the occasion in the St. George in Room 31?

A. I remember some of it.

Q. When you gave that $5,000 to Mr. Kratter in the Hotel St. George, do you remember some of the conversation?

A. If you will refreshen me I will remember it.

Q. Do you remember being asked this question at the previous trial by Mr. Castellano:

"Q. What else was said?

A. Mr. Kratter asked me, 'What do you want me to do for that?' I said, 'You know what to do.'"

Did Mr. Kratter say to you in the Hotel St. George?

A. I don't remember it.

Q. Would it be correct if you testified to that at the previous trial?

A. It is possible, but I don't remember it now.

Q. That is page 107 of the minutes. Now, let us go back to the restaurant. You say you went with Mr. Kratter to the restaurant a little after 1 o'clock, is that right?

A. I didn't say after, I said before 1 o'clock, to the restaurant I went before 1 o'clock.

Q. Before 1 o'clock?

A. Close to 1 o'clock I said.

Q. So to just keep our times straight, Mr. Kratter came in that place of business for the first time in your life about 12 o'clock?

A. Close to 12 o'clock I said.

Q. And you said a little before 1 o'clock he went with you, he and you went to the restauraat?

A. He went out and I went after him.

Q. So in the meantime only a span of less than an hour has passed by?

A. I don't know how much of a span it was, but that is the way it happened.

Q. So you sat down in the restaurant with Mr. Kratter, and while you were sitting there with Mr. Kratter, you [fol. 181] saw your accountant in the restaurant?

A. My accountant just walked past by me.

Q. You saw him?

A. Yes.

Q. Later on did your accountant come near your table?

A. In my place of business?

Q. No, we are still in the restaurant now.

A. My accountant was only once near my table.

Q. He came near your table?

A. That is the first time.

Q. How long was the accountant in the restaurant?

A. I didn't see him before.

Q. How long was your accountant in the restaurant?

A. I didn't see him before.

Q. How long had he been, as far as you remember, in the restaurant?

A. I don't remember; only a flash when he passed me by.

Q. Did you see him at all after that in the restaurant?

A. I did not see him at all.

The Court: Did you see your accountant at any time between what you say was the 15th of July and the 29th of July?

The Witness: I did see him, sure.

The Court: When did you see him next after the 15th?

The Witness: I must have seen him the same day.

The Court: On the 15th?

The Witness: Either the 15th or the 16th.

The Court: After Kratter left you?

The Witness: After Kratter left me, because my accountant told me he was waiting for me in my place of business over an hour.

The Court: Did you talk to your accountant about Kratter?

The Witness: Yes, I told my accountant about him and I told him I am really surprised.

The Court: You told him what?

[fol. 112] The Witness: I am really surprised what is happening now. I don't understand it, I told him.

The Court: Did you tell him you were solicited for a bribe?

The Witness: Yes.

The Court: On that day?

The Witness: I told him that the agent came in and he immediately made an attempt for money.

The Court: Did you say how much?

The Witness: I told him that he demanded the last thing $5,000.

The Court: What did he say to you?

The Witness: He didn't tell me anything.

Q. You say you told your accountant on that day?

A. That day or the previous day. Just exactly I can't tell. I am a sick man and you are trying to put me down. Well, if I wouldn't be sick I wouldn't give up a nickel to this man; I would pull him in immediately.

The Court: Do you want to take a recess? All right, we will take a recess.

(A short recess was taken.)

Q. Do you remember at the last trial being asked this question by the Presiding Judge, Judge Inch:

"Q. And at lunch you saw your accountant?

A. Yes." Is that correct?

A. Yes.

Q. "The Court: Who had prepared your income tax?

A. Yes, sir."

Mr. Castellano: May it please your Honor, I do not see how this is relevant. It is an improper examination of the witness.

The Court: I don't know so far. Go ahead, Mr. Pittoni.

[fol. 113] Mr. Pittoni: About one-third of the way up, your Honor.

The Court: Yes.

Q. "The Court: Did you tell the accountant that this man you were having lunch with had demanded $800 from you?

The Witness: No."

Do you remember testifying like that the last time?

A. Yes.

Q. "The Court: You did not tell him?

The Witness: I did not have a chance to talk to the accountant in the restaurant. I could not talk with him."

A. That is correct. I couldn't talk in the restaurant with him.

Q. Do you remember what the Judge's question was, though?

A. I don't remember.

Q. "Did you tell the accountant this man you were having lunch with had demanded $800 from you?

A. No."

Now between the day that Mr. Kratter was in your place of business the first time, the day you say is the 15th, and the day of your arrest, July 29, 1946, did you tell anybody else besides your accountant that Mr. Kratter tried to shake you down?

A. I spoke to my accountant. That is all.

Q. You told nobody else?

A. I had no occasion to talk to somebody else.

The Court: Well, did you?

The Witness: I did not.

Q. What did your accountant say to you when you say you told him Kratter wanted $800 from you?

A. He spoke about $5,000.

Q. You told your accountant that?

A. Yes, about the $5,000 at that time.

Q. That Mr. Kratter wanted $5,000 from you?

A. That was the last demand.

[fol. 114] Q. What?

A. The last demand, he demanded $5,000.

Q. You told that to your accountant?

A. Yes.

Q. What did your accountant say to that?

A. He answered me something, but I don't remember what he told me.

Q. Did your accountant tell you to report that to the authorities, that a Government agent had tried to shake you down for $5,000?

A. Did he tell me?

Q. Yes.

A. I don't remember that either. I don't think he told me.

Q. If you told your accountant that Mr. Kratter wanted $5,000 from you, you say your accountant did not say anything to that?

A. I only told him that Mr. Kratter demanded $5,000 of me.

Q. Did you tell anybody else between that time and the day of your arrest that Mr. Kratter demanded $5,000 from you?

A. I did not tell at all.

Q. Did you tell anybody at any time that Mr. Kratter at first asked for $800 and you gave him $800?

A. Somebody else?

Q. Anybody else?

A. I didn't tell nobody.

Q. Do you remember the day of your arrest?

A. July 29th.

Q. That is right. Do you remember Mr. Kratter saying to you in Room 31 at the Hotel St. George, in effect: "I am only doing this because you want me to," and your answer being, "Yes?"

A. I don't remember that.

Q. After you came out of Room 31 on July 29, 1946, do you remember being approached by Mr. Yung, Special Agent Burke Yung of the Treasury Department?

A. I remember being approached, but I didn't spoke to nobody.

Q. Do you remember telling Mr. Yung that you would tell the story to the proper authority?

A. I do remember that.

Q. That is the first time you ever said that to anybody; is that correct?

A. I remember I told that to Mr. Yung.

[fol. 115] Q. When Mr. Yung said to you, "I am a Special Agent of the Internal Revenue Bureau, a representative of the Commissioner's office," and he said, in effect, "What are the facts?" you refused to give him the facts; is that correct?

A. I didn't give anything. I didn't say anything.

Q. You did not tell Mr. Yung at that time that this man, Mr. Kratter, who had been in Room 31, had shaken you down for $5,000?

A. I didn't say a word to Mr.——

Q. Yung?

A. Yung.

Q. Do you remember being taken to my office in this building on the same date, July 29th?

A. I do.

Q. You were brought into my room; is that correct?

A. Yes.

Q. And Mr. Kratter came in, too, did he not?

A. Yes.

Q. Do you remember Mr. Kratter being asked to leave?

A. I don't remember that.

Q. Do you remember later on that you and I and Mr. Yung were left alone in the room?

A. I can't recollect that.

Q. Do you remember saying to me you refused to talk in the presence of Mr. Kratter?

A. I don't remember that, either.

Q. Do you remember my warning you of your rights, that you did not have to answer any questions?

A. Correct. You told me I shouldn't talk because whatever I say is going to be used against me.

Q. Do you remember my also saying that if you say anything in your favor that can be used in your favor?

A. I don't remember that.

Q. Do you remember when the agents tried to ask you any questions I warned you not to talk because anything that you said might be used against you?

A. Absolutely.

Q. That you did not have to talk unless you wished to?

A. That is right.

Q. After Mr. Kratter left the room, after I warned you of your rights, and so forth, do you remember Mr. Yung [fol. 116] saying to you, "Now you can tell Mr. Pittoni the story?" Do you remember that?

A. I don't remember that. I was very upset at that time. That was right after my arrest.

Q. Do you remember being asked this question and your saying to me and to Mr. Yung, "Anything I say will only hurt me?"

A. Yes.

Q. Who was going to hurt you?

A. I don't know, but it came out of the——

Q. You didn't tell me on that day that Mr. Kratter was an extortioner, did you, that he was trying to get money out of you, did you?

A. No, I didn't say anything to you.

Q. You never said anything to me at any time by pointing your finger at Mr. Kratter and saying, "That man shook me down for $5,000?"

A. No, I didn't say a word to you.

Q. You never told anybody?

A. No, not a word.

Q. One more question: Is the Grand Central Hotel the only hotel you stayed at during your vacation?

A. That vacation? Yes.

Q. The only hotel?

A. The only hotel.

Q. Is that Woodbridge?

A. You see the place——

Q. Is that Woodbridge?

A. It is Woodbridge, but the man calls it South Fallsburg.

Mr. Pittoni: That is all.

Redirect examination.

By Mr. Castellano:

Q. Mr. Michelson, you were asked a question about a telephone call from Kratter to your accountant on July 15th. I will read to you your testimony at the last trial, page 108, at the bottom of the page:

"Q. Did Mr. Kratter telephone to your accountant, Mr. Osterfield, on that first Monday, July 15, 1946, in your presence?

A. In my presence he asked me, and I gave him the tele- [fol. 117] phone number. I gave him the phone that belongs to the next counter. The gentleman said I could use his phone. I said, 'You do not have to go in the back.'"

Do you recall giving that testimony at your last trial?

A. Yes, I do.

Q. "Q. He called Mr. Osterfeld from your store?

A. He called Mr. Osterfeld up."

Mr. Pittoni: What page?

Mr. Castellano: Page 109.

Q. Do you remember being asked that question and giving that answer?

A. What?

Q. Referring to Mr. Kratter, I asked you a question:

"Q. He called Mr. Osterfeld from your store?

A. He called Mr. Osterfeld up."

Q. Is that correct?

A. Yes, he did.

Q. You stated that you kept $3,000 in the safe at your store at 74 Bowery?

A. Yes, I did.

Q. When was that?

A. That was at the time before July 15th—I mean before I was away on a vacation.

Q. And the money was there while you were on vacation?

A. Yes.

Q. Did you have the Holmes Protective Agency protecting your store?

A. The whole place has Holmes protection.

Q. Holmes protection?

A. Yes, and in the back we have a big safe which is protected by a cabinet, the Holmes protection, and the whole place has straps. That small safe is protected by a strap.

Q. Did you notify the Holmes Protection Agency the place would be closed up the two weeks prior to July 15th?

A. They must have been notified by Aronoff. He generally does that.

The Court: You don't know?

[fol. 118] The Witness: He is my partner.

The Court: Mr. Castellano wants to know whether you notified them.

The Witness: I did not.

Q. Do you know whether your partner notified the agency?

A. He must have.

The Court: Did Aronoff tell you he notified them?

The Witness: Generally every time when we go away from the place a few days——

The Court: Did Aronoff go with you?

The Witness: No. He goes to a different place.

The Court: But Aronoff went on a vacation.

The Witness: Yes. They all went. The whole block went.

Mr. Castellano: That is all.
Mr. Pittoni: That is all.
(Witness excused.)

Isodor Gerstein, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Castellano:

Q. Mr. Gerstein, will you give me your full name?
A. Yes. Isidor.
Q. Last name?
A. Gerstein.
Q. Where do you reside?
A. 74 Bowery.
Q. That is your place of business?
A. That is right.
Q. How long have you been in business there?
A. Twelve years.
[fol. 119] Q. Do you occupy one of the counters in that store?
A. That is right.
Q. Did all the jewelers in that store close their place of business two weeks prior to July 15, 1946?
A. Yes, sir.
Q. And no one entered that store during that period?
A. No, sir.
Q. Did you go on vacation during that period?
A. Yes, sir.
Q. Do you recall the 15th day of July, 1946?
A. Yes.
Q. Do you remember seeing Mr. Michelson at his counter in that store on Monday, the 15th of July?
A. Yes.
Q. Did you see anyone else there?
A. I saw a lot of people and I saw that inspector who came in there.
Q. Did you see Mr. Kratter?
A. Yes.
Q. Do you know Mr. Kratter?
A. Yes.

Q. Where was Mr. Kratter on July 15, 1946?

A. In Mr. Michelson's place, when he came in and took off his coat and hanged it up and sat down by the desk.

Q. A little table behind the counter?

A. Yes.

Q. Was he in his shirt sleeves?

A. That is right.

Mr. Castellano: That is all.

Cross-examination.

By Mr. Pittoni:

Q. Had you ever seen Mr. Kratter before?

A. When before?

Q. Before the 15th?

A. No.

Q. Did you ever see him again?

A. Never.

Q. You did not testify at the last trial did, you?

A. No, sir.

Q. When for the first time did you talk to anybody about this case?

A. About this case?

Q. Yes.

A. When I saw anybody?

[fol. 120] Q. When for the first time did you talk to anybody about Mr. Michelson's case?

A. Here lately. All the way through since that case started last month some time ago.

Q. When for the first time were you told you were going to be a witness on this case?

A. Oh, I spoke to the lawyer and Mr. Michelson about two weeks ago, a week ago or maybe three weeks ago. I know all the way through about that, when I saw in the papers what happened.

Q. When for the first time did Mr. Michelson or Mr. Michelson's attorneys mention the 15th to you, July 15th?

A. I didn't see nobody at that time.

Q. A lot of people come into your place of business, don't they?

A. Yes.

Q. Maybe hundreds of people during the day?

A. Maybe a hundred, maybe less, maybe more. People are coming in and out, in and out.

Q. In and out. Now, you say you saw Mr. Kratter at Mr. Michelson's place on July 15th?

A. Yes.

Q. You never saw him before that?

A. No.

Q. You never saw him after that?

A. No.

Q. Did he speak to you; Mr. Kratter?

A. No.

Q. Did Mr. Michelson say he knew that that was Mr. Kratter?

A. Yes. He told me he was an inspector.

Q. Did he introduce you?

A. No.

Q. Did he tell you what Mr. Kratter was in there for?

A. No.

Q. No? Did he tell you the very same day Mr. Kratter was there who Mr. Kratter was?

A. Maybe the same day, maybe a day later or two days later.

Q. He did not tell you what Mr. Kratter was there for?

A. He didn't tell me his business.

Q. Did he tell you that Mr. Kratter demanded $800 from him?

A. No.

[fol. 121] Q. Did he tell you that Mr. Kratter demanded $5,000 from him?

A. No. The only thing what I saw in the papers when it happened.

Q. You saw in the papers about the arrest. Did Mr. Kratter appear to be polite when you saw him on that day?

A. I beg your pardon?

Q. Was Mr. Kratter polite when you saw him on that day?

A. I saw him come in and behind the showcase and he took off his coat and he hanged it up and then they had a conversation there, I didn't pay attention closely because I didn't know what it is all about.

The Court: Were you watching all the time?

The Witness: Well, I can't miss it because I am right here and they are in front of me.

The Court: How far away from you?

The Witness: About 6 or 7 feet.

The Court: 6 or 7 feet?
The Witness: Like from here to that gate (indicating).
The Court: They were sitting there?
The Witness: Sitting there and talking.
The Court: Were they whispering?
The Witness: Well, they were talking about.
The Court: They were talking.
The Witness: Yes.
The Court: Were they whispering?
The Witness: Something like a little argue.
The Court: A little arguiment?
The Witness: Yes.
The Court: Could you hear it if you listened?
The Witness: A little bit.
The Court: Did you hear anything about "I am going to send the F. B. I. in and arrest you"?
[fol. 122] The Witness: No, I didn't hear that exactly, because it wasn't so loud.

Q. Did you hear Mr. Kratter demand $800?
A. No.
Q. You have no record of that day, the 15th, have you?
A. If I have the record?
Q. July 15th.
A. I had the record because we were——
Q. You have no record of July 15th?

Mr. Castellano: Let him answer that.
The Court: Yes. (Addressing the witness) How do you remember, Mr. Pittoni means. How do you remember this day was the 15th?
The Witness: I remember because I have to be in the business the 15th, Judge.
The Court: You had to be back?
The Witness: That is right, on Monday.
The Court: Could it have been the 16th?
The Witness: The 15th, Monday.
The Court: Or the 17th or 18th?
The Witness: No, sir.
The Court: That Kratter was there?
The Witness: No. Monday.
The Court: It had to be on the 15th?
The Witness: That is right.
The Court: Why did it have to be the 15th?

The Witness: Because it was the first day opened the place.

Q. Now tell me, you say you were on vocation for two weeks. When did you come back from your vacation?

A. I came back Sunday—Saturday. I was away at Sharon Springs, I came back on Saturday.

Q. Are you married?

A. Yes.

[fol. 123] Q. What time Monday did you go to work in the morning of the 15th?

A. I usually get in at 9.30.

Q. What time do you usually go to lunch?

A. Sometimes 2 o'clock, sometimes 1.30, sometimes later when I am busily occupied, I don't bother with lunch until later then.

Q. What time did you go to lunch on the 15th?

A. Maybe late, I couldn't tell you exactly when I go. I go sometimes 2 o'clock, sometimes 3 o'clock, sometimes 2.30.

The Court: But what time did you go on that day, do you know?

The Witness: I couldn't tell you exactly just when I go, Judge, but I went pretty late, very late.

Q. Did you see Mr. Michelson go out to lunch?

A. Yes.

Q. Did you go to lunch before or after Mr. Michelson went to lunch?

A. After, when I left after I couldn't say exactly, but I went after.

Q. Did Mr. Michelson go alone?

A. Go alone where?

Q. For lunch?

A. Somebody went out first, Mr. Michelson, he went out first and then the inspector; they went together, they went together.

Q. Who went out first?

A. Oh, the inspector went out first.

Q. And Michelson went after him?

A. That is right.

Q. Were you there when they came back?

A. I didn't see them when they came back, I didn't see them.

Q. How long were you there during the 15th?
A. In the place?
Q. Yes.
A. Until we closed up.
Q. What time do you close up?
A. Six o'clock.
Q. Did you see Mr. Michelson come back?
A. After that?
[fol. 124] Q. Yes, after lunch.
A. I saw him there all the time in the afternoon.
Q. Did he come back alone?
A. Yes.
Q. He did. And how long was he there after he came back alone?
A. He was there all afternoon.
Q. Did he tell you anything after he came back from lunch?
A. Just he tell me that the inspector was there.
Q. That is all?
A. And that is all.
Q. The inspector didn't come back with him?
A. I couldn't tell you that.
Q. When Mr. Michelson came back from lunch you say you were there, is that right?
A. Yes.
Q. When he came back he took his usual place in the store, is that right?
A. Yes.
Q. And his usual place in the store is about six feet away from you?
A. Yes.
Q. And the rest of the afternoon he was about six feet away from you?
A. Yes.
Q. You were there the rest of the afternoon and so was he?
A. That is right.

Mr. Pittoni: All right, your witness.
The Court: All right.
Mr. Castellano: Did Mr. Michelson tell you that this man was a Revenue Agent?
The Witness: Yes.
Mr. Pittoni: Oh——

The Court: Inspector he said.

Mr. Pittoni: Will you kindly ask proper questions and not leading questions. What did you tell him?

The Court: Wait a minute, wait a minute. Go.

[fol. 125] Redirect examination.

By Mr. Castellano:

Q. Did Mr. Michelson tell you on July 15th about the man who was behind the counter?

A. Yes.

Q. Did he tell you who the man was?

A. Yes.

Q. What did he say?

A. He says the Revenue was there.

The Court: The Revenue?

The Witness: Or whatever you call him.

The Court: Mr. Castellano wants to know what Mr. Michelson said, what he said the man was.

The Witness: The Revenue.

Q. Did Mr. Michelson talk to you again after the first trial?

A. Yes.

Q. That was the second time he talked to you?

A. Yes.

Mr. Castellano: That is all.

(Witness excused.)

Mary E. Kirk, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Castellano:

Q. Your full name, Miss Kirk?

A. Mary E. Kirk.

Q. Where do you reside?

A. 115 East 82nd Street.

Q. Are you employed?

A. I am employed by the firm of Charles Gulden, Inc.

Q. That is the mustard company?
A. The mustard firm.
Q. Is that company the landlord of 74 Bowery?
A. That is correct.
[fol. 126] Q. New York City?
A. Yes.
Q. Do you know the defendant Solomon Michelson?
A. Yes, I know him.
Q. How long have you known him?
A. I would say about 15 years, at least 15 years.
Q. Do you know other people who know him?
A. Yes, I do.
Q. Have you had occasion to discuss his reputation for honesty, truthfulness and as a law-abiding citizen?
A. I wouldn't say I have, but I never heard anything against him; so far as I know his character is excellent.

Mr. Castellano: That is all.

Cross-examination.

By Mr. Pittoni:

Q. Miss Kirk, did you ever hear that Mr. Michelson on March 4, 1927, was convicted of a violation of the trade-mark law in New York City in regard to watches?
A. No, I did not.
Q. And that he was sentenced to pay a fine of $100 or 30 days in jail?
A. No.
Q. Did you ever hear——
A. No.
Q. (Continuing:) —that on October 11, 1920, the defendant, Solomon Michelson, was arrested for receiving stolen goods?
A. No.

Mr. Castellano: I object to that.
The Court: I sustain it.

Defendant's Motion for Mistrial

Mr. Castellano: I move for a mistrial; I do not think it is proper.
Mr. Pittoni: I just gave you a memorandum, I just gave you a memo on that.

The Court: I overrule the objection on the basis of United States v. Comerford, 64 Fed. (2d) 28, and Stewart v. United States, 104 Fed. (2d) 234, and other cases. However, I in-
[fol. 127] struct the jury that what is happening now is this: the defendant has called character witnesses, and the basis for the evidence given by those character witnesses is the reputation of the defendant in the community, and since the defendant tenders the issue of his reputation the prosecution may ask the witness if she has heard of various incidents in his career. I say to you that regardless of her answer you are not to assume that the incidents asked about actually took place. All that is happening is that this witness' standard of opinion of the reputation of the defendant is being tested. Is that clear?

Mr. Castellano: Exception.

(Last question and answer repeated.)

The Court: Any other questions?

Mr. Pittoni: No other questions.

(Witness excused.)

Benjamin Orgel, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Castellano:

Q. What is your occupation, Mr. Orgel?
A. Manufacturing jeweler.
Q. Where are you engaged in business?
A. 83 Canal Street.
Q. How long have you been in business?
A. Over 25 years.
Q. Always in the City of New York?
A. That is right.
Q. Do you know the defendant, Michelson?
A. I do.
Q. How long have you known him?
A. More than 25, 30 years. Between 25 and 30 years.
[fol. 128] Q. Do you know other people who know him?
A. Yes.

Q. Have you had occasion to discuss his reputation for honesty, truthfulness and for being a law-abiding citizen with these other people?

A. No.

Q. You never talked with them about those things?

A. Just that I haven't heard anything derogatory against him.

Q. Have you ever talked——

The Court: He says he has not discussed his reputation.

The Witness: His reputation, that is understood from my viewpoint that he was an honest man always and a law-abiding citizen.

Mr. Pittoni: I object to that.

The Court: I fully sympathize with the witness, I must say, with all due respect to the law of evidence, but the gentleman said he hasn't discussed his reputation, but he has heard nothing against him.

Mr. Castellano: That is all.

Mr. Pittoni: No questions.

(Witness excused.)

DAVID OPPENHEIM, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

Direct examination.

By Castellano:

Q. What is your occupation?

A. Watch-case maker.

Q. Where are you engaged in business?

A. 133 Canal Street.

Q. How long have you been engaged in business?

A. Over 27 years.

[fol. 129] Q. In New York?

A. In New York, yes, sir.

Q. Do you know the defendant Michelson?

A. I know him very well.

Q. Do you know other people who know the defendant Michelson?

A. Yes, I do.

Q. Have you had occasion to discuss with other people his reputation for honesty, truthfulness and being a law-abiding citizen?

A. Yes.

Q. What is his reputation as such?

A. Very, very good, very honest.

Mr. Castellano: That is all.

Cross-examination.

By Mr. Pittoni:

Q. Did you ever hear that on March 4, 1927, the defendant, Solomon Michelson, was convicted in the Court of Special Sessions?

A. Yes, I did, I had been at the trial, too.

The Court: You were at that trial?

The Witness: Yes.

Q. And you know that he was fined $100 or 30 days in jail?

A. That is right, but there were other——

Q. Just a minute. Did you ever hear that on October 11, 1920, the defendant, Solomon Michelson, was arrested in New York City for receiving stolen goods?

A. That I never heard.

Mr. Castellano: I renew the objection on the ground that it is irrelevant.

The Court: Yes, but the cases specifically cover that situation.

Mr. Castellano: I am familiar with those cases relating to convictions.

[fol. 130] The Court: No, Mr. Castellano: I am talking about the cross-examination of a character witness. I am wondering whether you had any special point about it, because the cases seem quite clear.

Mr. Castellano: All right.

The Court: Have you any special point aside from the question of direct proof in order to impeach a person's character that you may not prove an arrest? Are you applying that law to this?

Mr. Castellano: That is right.

The Court: Well then, I overrule your objection on that with an exception to you.

Mr. Castellano: Yes.

The Court: Again I say to the jury there is no proof that Mr. Michelson was arrested for receiving stolen goods in 1920, there isn't any such proof. All this witness has been asked is whether he had heard of that. There is nothing before you on that issue. Now would you base your decision on the case fairly in spite of the fact that that question has been asked? You would? All right.

Step down.

(Witness excused.)

Louis Weitzman, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Castellano:

Q. Mr. Weitzman, what is your occupation?
A. Motion picture business.
Q. Where?
A. Union City, New Jersey.
Q. How long have you been in the business?
A. Since 1917.
Q. In the motion picture business?
A. Yes.
[fol. 131] Q. Do you operate theatres?
A. I have two theatres there.
Q. Do you know the defendant Michelson?
A. Yes.
Q. How long do you know Mr. Michelson?
A. About 30 years.
Q. Do you know other people who know him?
A. Yes.
Q. Have you had occasion to discuss his reputation for honesty and truthfulness and for being a law-abiding citizen?
A. It is very good.
Q. You have talked to others?
A. Yes.

Q. And what is his reputation?
A. Very good.

Mr. Castellano: That is all.

Cross-examination.

By Mr. Pittoni:

Q. Did you ever hear that on March 4, 1927 the defendant, Solomon Michelson, was convicted for a violation of the trade-mark law and was sentenced either to pay a $100 fine or spend 30 days in jail?
A. No, sir.

The Court: You said no?
The Witness: No, sir, your Honor.

Q. Did you ever hear that on October 11, 1920 the defendant, Solomon Michelson, was arrested in New York City for receiving stolen goods?
A. No.

Mr. Pittoni: That is all.
The Court: Do you still repeat your testimony given on direct?
The Witness: I do.
Mr. Pittoni: He still says "No."
The Court: Step down.

(Witness excused.)

[fol. 132] Abraham Osterfeld, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Castellano:

Q. Mr. Osterfeld, do you know the defendant Michelson?
A. I do.
Q. Have you served as his accountant?
A. I have.
Q. Have you served as his accountant?
A. Yes, I have.

Q. Do you recall the 15th day of July 1946?

A. I do.

Q. Do you recall receiving a telephone call from Michelson's place of business?

A. That is right.

Q. Do you know who called you on that occasion?

A. A gentleman who gave me the name as Krapness or Kratter.

Q. What did he say to you?

A. He told me he was in Michelson's business office, he says, whether he could have the books, and he asked for the 1942 return.

Q. What did you tell him?

A. I told him it was perfectly all right to go ahead, and I will have the return the next day.

Q. Did you have the copies of the 1946 return of the defendant Michelson at the time?

A. I have all the copies at my home of all the years past.

Q. Did you have the 1942 return on that day?

A. I did.

Q. And you had it at home?

A. That is right.

Q. Did Kratter ask for that return?

A. He did.

Q. Did you tell him you would get it for him?

A. That is right.

Q. Later on that day did you go to Michelson's place of business?

A. I did.

Q. About what time?

A. It was about 1.15 or 1.20.

Q. Was Michelson in his store at the time?

A. He was not.

[fol. 133] Q. What did you do after that?

A. I walked across the street to a restaurant to get something to eat; that was my usual lunch hour.

Q. Did you have anything to eat there?

A. I just ate some jello.

Q. While you were there did you see the defendant Michelson?

A. I did.

Q. Was he with someone?

A. He was with another gentleman, a young man.

Q. Did you talk with Michelson while you were in the restaurant?

A. I did not.

Q. How long did you remain in the restaurant?

A. About five or ten minutes, as long as it would take me to finish the jello.

Q. Where did you go from the restaurant?

A. I went back across the street to Michelson's place of business.

Q. How long did you wait there?

A. I waited there for forty or forty-five minutes.

Q. Where did you go after that?

A. I went back to work.

Q. Where did you have to go back to work?

A. At 245 Canal Street, for the Spanish newspaper, LaPrensa.

Q. You do accounting work also?

A. I do.

Q. Did Mr. Michelson tell you anything with reference to a demand, did he say anything to you about $5,000?

A. He spoke to me that evening. I went back because I was interested in what happened, and he told me he had some business with this man, and told me something about money, and that he would tell me more later on.

Q. Did he mention a figure of $5,000?

A. He did.

Q. Did he say what the figure was for?

A. No, he did not.

Q. Did you say anything to Michelson?

A. I told him not to give any money as far as I was concerned, as the returns are O.K.

[fol. 134] The Court: Did he say that this man had tried to shake him down?

The Witness: Well, not exactly shake him down. He said that this man was going through his records, and he wanted money from him.

The Court: Did he say that this man demanded a bribe?

The Witness: No, he did not use those terms.

The Court: Did he use any terms from which you thought he was endeavoring to bribe him?

The Witness: No, he implied that there was additional tax due.

The Court: He didn't tell you anything that would indicate to you that it was a bribe?

The Witness: No, sir.

Q. After July 15th did you telephone to Kratter?

A. I did.

Q. Do you recall when?

A. I called on the 16th, and a young lady answered that he was not in. I left my name and address. Then I called him again on the 17th, and the same answer was given to me. And again I called subsequent at Mr. Michelson's request to my office, and a gentleman answered and said that Mr. Kratter was on his vacation.

Q. Did Mr. Michelson come to you to find out——

The Court: I wasn't clear where these calls were made, where he made these calls.

Q. Did you call Kratter at his office?

A. Yes, at his office.

Q. Do you know where his office was?

A. At a Cortlandt number.

Q. Do you know the address?

A. I think it was 225 Broadway.

[fol. 135] The Court: I thought they said 253 Broadway.

Mr. Castellano: That was another office; they have another office there I believe.

The Court: Oh, 165.

Mr. Castellano: 165, that is right.

Q. Did Michelson visit you and request you to make a call?

A. He did, on Thursday morning.

Q. What date was that?

A. That was the 17th.

Q. Did you call again after Michelson visited you?

A. That was the 18th, I believe, the 18th.

Q. Did you at all times have this copy of the return ready?

A. I did, and gave it to Mr. Michelson on that Thursday morning.

Q. What date?

A. The 18th.

Q. Of July?

A. July.

Q. 1946?
A. That is right.

Mr. Castellano: That is all.

Cross-examination.

By Mr. Pittoni:

Q. In the restaurant did you go over and talk to Mr. Michelson, Mr. Osterfeld?
A. I did not.
Q. Did Mr. Michelson come over to you and tell you in the restaurant that Mr. Kratter was trying to shake him down?
A. No, he did not.
Q. Did Mr. Kratter greet you at all in the restaurant?
A. Just by his eyesight.
Q. He didn't go like this (indicating) to you or anything?
A. No, he did not.
Q. Just looked in your direction?
A. That is right.
Q. Did he seem to be in argument with Mr. Kratter, the man with him?
A. At the time I saw him they were getting either dessert or something and going back to eat — the table.
[fol. 136] Q. Everything seemed to be rather calm?
A. Well, I would judge that way.
Q. Did Mr. Michelson act in his usual way from your observation?
A. Well, I sat at a distance there, and it appeared to be he was uneasy.
Q. Now, in your job with LaPrensa you are pretty much your own boss, aren't you?
A. To a certain extent.
Q. You can come and go as you please?
A. No.
Q. On this particular occasion you were out of the office of LaPrensa quite a bit of time, weren't you?
A. I am out every day quite a bit of time.
Q. So that you can come and go as you please, is that correct?
A. Only during my lunch time.

Q. How long were you out for lunch on that day?

A. About two hours.

Q. Then you went back to Mr. Michelson's office that very same day?

A. That is right.

Q. So on that particular day you were out for lunch over two hours, and you were also——

A. I said about, not over.

Q. What?

A. I said about, not over.

Q. How long had you been an accountant for Mr. Michelson?

A. Well, I have been doing his work for him for the past twelve years directly myself. Prior to that time he had a bookkeeper, and I supervised the returns. In all about twenty years.

Q. Does he usually from your observation take you into his confidence on financial matters?

A. No, I wouldn't say that he does.

Mr. Castellano: I object to that question.

The Court: I think the witness can answer a question like that.

Mr. Castellano: If you think so; it is calling for the mental operation of the witness.

The Court: So far as he can judge I think so.

[fol. 137] Q. Will you answer yes or no?

The Court: He has answered. He said, "I do not think he does."

Q. At any rate at no time up until the day of his arrest did he ever tell you that Mr. Kratter tried to shake him down for any money?

A. Prior to his arrest he spoke to me about it in general terms; he told me that the man asked for $5,000.

Q. That isn't what I asked you. Do you remember the Judge asked you before——

A. Yes.

The Court: Mr. Witness, let us make a distinction between a legitimate or even an exorbitant demand for extra taxes and a bribe.

The Witness: All right.

The Court: You can make that distinction?

The Witness: Yes.

The Court: What Mr. Pittoni is endeavoring to ask you is, prior to Michelson's arrest did you even suspect from anything he said that somebody was trying to solicit a bribe from him?

The Witness: No, sir, I could not.

Mr. Pittoni: That is all.

Mr. Castellano: That is all.

(Witness excused.)

NEIL SMITH, called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Castellano:

Q. Mr. Smith, where do you reside?

A. 1921 East 32nd Street, Brooklyn.

Q. What is your occupation?

A. Sales manager.

[fol. 138] Q. For whom?

A. Standard Milling Company.

Q. What line of business?

A. Flour; Hecker's Flour.

Q. How long have you been with that company?

A. Five years.

Q. Before that what was your occupation?

A. Assistant sales manager of the Beechnut Packing Company.

Q. For how many years?

A. Nineteen years practically.

Q. Do you know the defendant, Solomon Michelson?

A. Very well.

Q. How long do you know Mr. Michelson?

A. More than twenty years.

Q. How did you come to meet him?

A. In his place of business on the Bowery when I made a purchase from him.

Q. Has he been to your home on occasions?

A. Yes. For the past ten years or more he has been to my home for Thanksgiving and Christmas regularly.

Q. Do you know a lot of people who know Mr. Michelson?

A. Yes, I do.

Q. Have you had occasion to discuss his reputation for honesty, truthfulness and for being a law-abiding citizen?

A. Yes, sir.

Q. What do you find his reputation for those things to be?

A. I would call it excellent.

Mr. Castellano: That is all.

Cross-examination.

By Mr. Pittoni:

Q. Did you ever hear that on March 4, 1927, the defendant, Solomon Michelson, was convicted of violating the New York City trademark laws and was sentenced to pay $100 or thirty days in jail?

A. If that was in reference to watch dials, I did hear about it.

Q. Did you ever hear that on October 11, 1920, the defendant, Solomon Michelson, was arrested for receiving stolen goods?

[fol. 139] Mr. Castellano: The same objection.

The Court: Same ruling.

Mr. Castellano: Exception.

A. No.

The Court: Would it have made any difference if you had known that latter?

The Witness: I don't think so.

Mr. Castellano: The defendant rests.

The Court: Any rebuttal?

Mr. Pittoni: There is a possibility, your Honor, that I may want a minute or two on Wednesday.

The Court: How long will it be?

Mr. Pittoni: Very short.

The Court: Would you like to have some time to make up your mind about it, because if you do I will give Mr. Castellano the same privilege on surrebuttal.

Mr. Pittoni: I would rather try to fully complete the case myself right now, but I want to make sure.

The Court: Your adversary is to have the same privilege.

The Court: Do you want to say something, Mr. McNamara?

Mr. McNamara: I wanted to say something to Mr. Castellano.

Mr. Castellano: We would like a daily report sheet. We have the ones for the 16th and 17th, and we would like to have the one for July 15th.

The Court: To be produced, you mean?

Mr. Castellano: Yes. It was produced at the last trial.

The Court: Do you want to offer it?

Mr. Castellano: Yes, I would like to offer it.

Mr. Pittoni: I will offer it as a Government exhibit if you want.

[fol. 140] Mr. Castellano: All right.

Mr. Pittoni: Do you want to make this part of the other two exhibits?

Mr. Castellano: It doesn't matter.

(Daily report for July 15th received in evidence and made part of Government's Exhibit 2.)

The Court: Since we are not to close the case today, you have the option to withdraw your statement that you rested.

Mr. Pittoni: Your Honor, all I want is initial rebuttal. If he is closing, then it is surrebuttal to mine.

The Court: I know that. I was thinking along different lines. If one side has the opportunity to look over the case and go back, the other side should have the same privilege.

Mr. Castellano: Then let us withdraw the defendant rests right now.

Mr. Pittoni: All right; we will rest right now.

Mr. Castellano: Then both sides rest. All right.

The Court: Members of the jury, I will excuse you until 10.45 on Wednesday, and you will please not discuss the case among yourselves, and try to form no opinion at all, permit no one else to discuss it with you, and keep your minds open until it is submitted to you for decision.

(Whereupon an adjournment was taken to 10.45 A. M., Wednesday, January 8, 1947.)

[fol. 141] Brooklyn, New York, January 8, 1947.

Appearances:

(As Before Noted)

Trial Continued

Ruling on Requests to Charge

(The following occurred in chambers with the jury not present.)

The Court: First as to Mr. Castellano's requests. Request No. 1 I intend to charge.

Request No. 2 I intend to charge in substance. That is, I intend to tell the jury what the charge laid in the indictment is, but at the end of that portion of the charge I intend to read the statute to them, or at least to paraphrase it.

Charge No. 3 I intend to charge in part, namely: I will charge that there can be no conviction unless a criminal intent is established. Mr. Castellano excepts to my refusal to charge in the language requested?

Mr. Castellano: Correct.

3. There can be no conviction unless the criminal intent is established and the criminal intent charge here is in three parts, to influence the decision of the Agent in the matter pending before him, to influence the Agent to collude in and allow a fraud on the United States, and the final intent to induce him to do an act in violation of his duty with reference to the defendant's income tax returns. This is the intent charged in the indictment and the Government must establish such intent beyond a reasonable doubt before you can convict.

The Court: Request No. 4 I intend to charge with modifications. In the sixth line of the request I intend to substitute the word "or" for "and" in both places. In the next to the last line of the request I intend to delete the [fol. 142] words "as charged in the indictment." The theory of my dealing with the request in that way is that the three forms of intent set forth in the statute are in the disjunctive; the indictment pleads those three forms of intent in the conjunctive. It is my own belief that if the jury finds any one form of specific intent, that that is a sufficient basis

for a conviction, given all the necessary ingredients of a conviction.

Mr. Castellano excepts to my refusal to charge request No. 4 in the language charged?

Mr. Castellano: That is right.

4. In determining the criminal intent, if any existed, you must therefore decide (1) was there a matter pending before the agent in his official capacity, (2) did any facts exist from which you can draw the conclusion that the defendant desired to influence the agent to collude in and allow a fraud on the Government, and (3) did any facts exist from which you can draw the inference that the defendant intended that the agent violate his duty in reference to the defendant's income tax returns. If you find that such intent as charged in the indictment did not exist you must return a verdict of not guilty.

The Court: Request No. 5 I intend to charge as modified so that it will read as follows:

"Government officers may not incite, instigate or cause the commission of a crime for the sole purpose of prosecuting and punishing it."

Mr. Castellano: As modified that is satisfactory.

The Court: Request No. 6 I intend to modify by striking out "It is contrary to public policy and to established law to punish" so that the charge as made will read: "A man cannot be convicted for the commission of a crime which he would never have committed if the agents and officers of the law had not inspired, incited, persuaded and lured him to commit."

[fol. 143] Mr. Castellano: The modification is satisfactory.

The Court: Request No. 7 I intend to charge as modified in the following way so that it will read: "Even where a person may appear to have violated the letter of the law, if it appears that such violation originated with and was brought about by the acts of the Government agent, it is the duty of the jury to find such person not guilty."

Mr. Castellano: That is satisfactory.

The Court: Request Nos. 8 and 9 I intend to charge in substance. The only reason why I don't charge them in the language requested is because it is to a certain extent I believe repetitious. In other words, in the colloquial

charge I intend to cover entrapment and to inform the jury as well as I can that the primary test of entrapment is where the idea of the crime originated. Both of the requests embody that language. I intend to charge the jury colloquially that if the crime originated with the agent, that then they cannot convict the defendant.

Mr. Castellano: Exception.

8. The Trial Judge and you members of the trial jury are only advised as to the facts in every case when they are developed at the trial. If the trial shows an issue of fact as to whether the agent originated the idea of the money payment or whether the idea originated with the defendant, it becomes the duty of the Court to submit that question to the jury along with other questions that arise in the case.

9. Even though the evidence shows that the money did pass to the agent from the defendant, it still becomes the duty of the jury to determine who originated the idea for the delivery and payment of this money. The mere delivery or payment of the money is insufficient to convict because if you believe that the idea originated with the agent, it would become your duty to acquit the defendant. Any other ver-
[fol. 144] dict would lead to an absurd and unjust result which would be contrary to the intent of Congress in passing the bribery law.

Mr. Pittoni: Do you mind if I interrupt?

The Court: Certainly not.

Mr. Pittoni: If you are going to charge colloquially in regard to entrapment, what is the necessity for charging the fifth, sixth and seventh except as repetitious? They have all got to do with entrapment here.

The Court: Only this, in my colloquial charge I intend to try to follow as closely as I can the language of 5, 6 and 7.

Mr. Pittoni: I see.

The Court: The same disposition is true of No. 9 which again embodies the idea of who originated the thought of the crime. I do not think it adds anything to the others, I think it is largely repetitious.

Mr. Castellano: That is satisfactory.

The Court: And the same thing is true of No. 10.

Mr. Castellano: Yes.

The Court: Request No. 11 I intend to modify. I am going to say to the jury that in itself the fact that the de-

fendant paid a fine of $100 twenty years ago does not establish his guilt that that evidence is offered merely on the question of credibility.

Mr. Castellano: Satisfactory.

The Court: That here we are dealing only with the bribery charge specifically laid in the indictment.

Request No. 12 I intend to charge in the language requested. I have some doubt about whether entrapment is such an ingredient or element of a crime that the reasonable doubt rule applies to it, but that is merely abstract legal theory. I think that as a matter of practice in criminal cases that if there is reasonable doubt on the issue of entrapment the defendant ought to be acquitted, and I intend to charge that way.

[fol. 145] No. 13 I am going to refuse on several grounds: First, that it is a summary of the evidence, and I do not think it is advisable for a Judge to accept from either side in a criminal case its own summary of the evidence. I think he should summarize the evidence as well as he can. Secondly, I believe on the issue of entrapment it is repetitious, and if the entrapment claim is well covered in the colloquial charge there seems to be no point in reiterating everything that is set forth in No. 13. You can except to that, Mr. Castellano.

Mr. Castellano: Yes, we will take an exception to that.

Mr. Pittoni: You do?

Mr. Castellano: Yes.

13. Defendant contends that the criminal design here originated with the agent upon the agent's first visit to defendant's place of business and that the agent implanted in defendant's mind the idea of paying over $5,000 in cash. You have heard the evidence relating to this first visit by the agent when two cards with the name of the agent and his Revenue office address printed thereon. One card has the agent's home telephone number written in pencil thereon. The agent admitted writing his residence telephone on one card which he wrote at the store of defendant and gave it to defendant. You have the duty to consider this evidence in determining who proposed the idea of paying money for any unlawful purpose. If you find the idea originated in the mind of the agent and was proposed by him you must return a verdict of not guilty on both counts. If

you have a reasonable doubt on this question you must return a verdict of not guilty on both counts. Likewise you must consider the other evidence including the lunch, the walk to the park and the conference in the park. You may properly ask, are these the usual methods of performing the duties of a Government official or was it all part of the official's plan to induce and cause a payment of money upon [fol. 146] which to base a prosecution, if it was a plan of the agent, you must acquit the defendant.

The Court: No. 14 is in the same category as the others I mentioned, and so is 15, and so is 16. In other words, I intend to try to cover entrapment in the colloquial charge on the authority of cases like Abdallah and others, and possibly the Ray case, although that is only a District Court case.

Mr. Castellano: That is satisfactory as to 14, 15 and 16.

Mr. Pittoni: And the Lindenfeld case?

The Court: And Lindenfeld mainly. 17 I intend to charge in the language requested.

18 I intend to charge in the language requested.

19 I intend to charge in the language requested, and also No. 20.

21 I refuse to charge in that language. I intend to charge the jury on their duty to deliberate practically in the language of United States v.—what is that case?

Mr. Castellano: Will you charge as stated on page 178 of the record, there is no proof that Mr. Michelson was arrested for receiving stolen goods in 1920. There isn't any such proof. That is what you stated on page 178 of the record.

The Court: What did I say?

Mr. Castellano: "There is no proof that Mr. Michelson was arrested for receiving stolen goods in 1920, there isn't any such proof." That is what you said after Mr. Pittoni cross-examined the character witness.

The Court: Yes.

Mr. Castellano: That is the statement you made at page 178.

The Court: And I will now add to that, there couldn't be any such proof because the prosecution would be disabled to offer it. However, in the light of the case and the treatment given the subject by Wigmore in Section 988 I now ask Mr. Pittoni, is it a fact according to the best infor-

[fol. 147] mation in your possession, that Michelson was arrested for receiving stolen goods?

Mr. Pittoni: Absolutely.

The Court: I now ask the Reporter to mark for identification a paper which Mr. Pittoni has given me.

Mr. Pittoni: That is to show my good faith.

(Marked Government's Exhibit 6 for Identification.)

The Court: The rule as stated by Wigmore is this, that while that form of examination is permissible, and there are a host of cases both Federal and State on the subject, that it is subject to abuse in that counsel may make matters up out of thin air and ask witnesses the question merely for the purpose of asking the question; that therefore it is a matter which should be controlled.

This is the first time I have dealt with the subject, and in the future I intend to deal with it as I have dealt with it now, namely, to call the examining counsel up to the bench and ask counsel to give me his word as an officer of the court that he isn't making that up, and that he is merely using the question in an endeavor to test the standards of the character witness concerning what the defendant's reputation and character is, and for no other purpose.

I have already instructed the jury on the purpose of the evidence, and I am glad you reminded me of it, I intended to get something in the record to show this.

Mr. Castellano: Would you add to the jury that they are not permitted to assume that any subsequent proceedings were had other than the arrest?

The Court: Of course I meant to say that, and I intend to try, if possible, unless I forget it, to reiterate to the jury that the sole and only purpose of asking the question was to test the standards of the witness testifying.

The case that I had in mind was a case where the jury had come back and reported that they were in hopeless disagreement, and the Judge charged the jury further [fol. 148] and here is what he said. The case is United States vs. Winters, 117 on the October Term, 1946.

"You should give heed and take counsel with your fellow members on the jury. You should not hold out for any caprice, for any arbitrary reason. And while I would not want you for a moment to relinquish or abdicate any firm conviction that you may have, yet the minority ought to give due weight and due consideration to the majority.

Now, you understand I am not saying to you that you should relinquish any firm conviction that you have, but I really think you should retire again."

Approving of that Judge Frank says:

"We see nothing whatever in defendant's assertion that the Judge's remarks on the desirability of reaching a verdict constitute coercion of the jury."

All I can do is to follow my betters.

DEFENDANT'S MOTION FOR DIRECTED VERDICT

Mr. Castellano: The defendant now moves for a directed verdict of acquittal on the whole case and on the grounds stated at the close of the Government's case.

The Court: I think that covers everything under the new rules?

Mr. Castellano: I think so.

The Court: Motion denied, and the defendant excepts.

Mr. Castellano: Exception.

(The following proceedings were had in the presence of the jury:)

The Court: You may proceed, Mr. Castellano, if you are ready.

(Mr. Castellano summed up to the jury.)

[fol. 149] CHARGE OF THE COURT

KENNEDY, U. S. D. J.:

Members of the jury: I would like to tell you at the outset what your function, your job, is, and what mine is. It is my duty, as you have seen, to rule on the admission of evidence and to rule on questions of law that come up during the trial; and that function is mine alone. If you should disagree with my rulings or with the instructions on the law that I give you, that wouldn't be right, because it isn't any part of your job to pass on those matters. And by the same token you have the sole responsibility of deciding the facts in this case, deciding what happened as a matter of fact here—not I, not the counsel.

It is proper that each side through its counsel should put its best foot forward and should argue in good faith the facts as counsel sees those facts. That is highly proper, and this trial has been very competently conducted by counsel on both sides. But nevertheless statements of fact

by counsel are not binding upon you if your recollection differs. And it is the same way, as I will have occasion to say to you more at length in a moment, concerning what witnesses are to be believed and what witnesses are not to be believed. So that all I am attempting to do at this time is to outline to you the rules of law that you should apply in your decision in a case of this character.

The defendant is here by virtue of an indictment, and I say to you that an indictment in itself is not proof of anything at all. It is merely a charge. And this indictment charges in two parts the commission of a crime against the United States by the defendant. In the first part or count it charges that the defendant on July 29, 1946, gave a sum of money, namely, $5,000, to a Government agent with intent to influence his decision and with intent to influence him in allowing a fraud on the United States, and with an intent to doing acts in violation of his lawful duty, that is, to induce the agent to do that.

[fol. 150] Count 2, covering the same transaction, is substantially the same in its import except that instead of charging the defendant with giving the money it charges him with offering the money on the same day.

The statute under which this indictment is laid provides in substance that whoever promises or offers or gives any money or other thing of value to any person acting in behalf of the United States with the intent to influence his decision or with the intent to influence him to aid in a fraud upon the United States, or with an intent to induce him to do any act in violation of his duty, is guilty of an offense.

As a result of the form the proof took in this case, as I see it, the Government is bound to establish beyond a reasonable doubt in this case, and I will mention that in more detail later, three essential ingredients of the crime with which the defendant is charged. The first is that the defendant either gave or offered, or both, money to a Government agent. The second is that when the difendant gave or offered, or both gave and offered, this money to the Government agent it was the defendant's intention either to influence the agent's decision or to influence the agent to allow a fraud on the Unted States, or to influence the agent to violate his duty. Normally those would be the only two elements of the crime as outlined in the statute. However, as I said, by virtue of the form that the proof has taken there is a third element here. The defendant

claims that the idea of the crime did not originate with him, but did originate wth the agent Kratter. And under rules which I will outline to you immediately after I dispose of this particular matter, the Government under those circumstances is bound to prove beyond a reasonable doubt that the crime did originate with the defendant.

So you have the three elements: Did the defendant give or offer money to a Government agent, which is No. 1. No. 2 is, did he do it with intent to influence that agent's decision or to perpetrate a fraud upon the United States, [fol. 151] or to induce that agent to violate his duty. And third, did the intent, the idea of committing the crime, originate with the defendant or with the agent.

The claim that is made in this case by the defendant that the thought of crime originated not with him but with the agent Kratter is a defense which the law calls entrapment. Entrapment of a defendant by Government agents exists only when Government agents originate and induce the criminal intent of the defendant. There is no entrapment then where the defendant already had the criminal intent, and the agents merely afforded him the opportunity to commit the crime. In other words, the root question in determining this third question—and I am taking that first for reasons which will be clear to you later—the question on that issue is this: Whose idea was it to commit the crime in the first instance? Because if it was the defendant's idea to commit the crime in the first instance, there is nothing at all wrong in the agents of the United States giving him an opportunity to go through with it. If you should find—and I do not suggest that you do—the facts are for you; nor do I suggest that you don't, it is for your decision—if you should find that it was Michelson's thought in the first instance to bribe, to offer any money, in order to influence the agent within these rules taken as a whole, then there is nothing wrong at all in the telephone calls between the agent and himself, or inviting him to the St. George for the payment of the money. In other words, who was the man in whose brain the crime originated? That is what you must decide on the issue of entrapment.

Now, the reason for that doctrine in Federal criminal enforcement law is simply this: that a man can't be convicted of a crime which he himself didn't intend to commit in the first instance and which he never would have committed if the agents hadn't inspired, incited, persuaded and

lured him to commit it. So even when a person has violated [fol. 152] the letter of the law, if that violation originated, the idea of it originated, with Government agents, then such a person is not guilty of a crime. And that in this case becomes a jury question, as I have attempted to say to you; in other words, it is for you to say in whose brain did this thought of crime originate. So if the thought orignated in the mind of the agent, even though in consequence of that later on money passed, the jury, if it is satisfied—or, to put it another way, the jury, if they are not satisfied beyond a reasonable doubt that the crime had originated in the brain of Michelson, the defendant, would pay no attention to the later transactions.

And the defendant has a right, under proper circumstances, to urge and to show by proof if he can, or to offset the Government's proof if he can, that the thought of the crime did not originate with him.

So these are the three issues that are before you for decision: The giving or offering of money, the criminal intent as outlined in the statute, and, as I have already mentioned, did the defendant originate the crime.

In all criminal cases, and in this case, the burden of proof is upon the Government from start to finish. The defendant is attended by what the books call the presumption of innocence. He is presumed to be innocent right up until the time when he is found guilty by the verdict of twelve jurors. And in consequence of that the burden of proof never shifts from the Government. So that if you entertain a reasonable doubt upon the whole case, or as to any integral elements of the case, including whether or not the agent or the defendant originated the idea of the payment of the money, it would be your duty under these rules to return a verdict of not guilty on both counts.

And that strong protection which the law affords the defendant goes even further than that. So that if you should reach the conclusion that the evidence is consistent equally with innocence and with guilt, then the Govern- [fol. 153] ment would not have established its burden, obviously, of establishing beyond a reasonable doubt that the defendant was guilty.

What does reasonable doubt mean? It is a term that has been, shall I say, sometimes the subject of bitter dispute, but really isn't a difficult concept to analyze. It does not mean a whim or caprice or anything of that kind; it means

a doubt founded upon reason and arising after a fair and impartial consideration of all the evidence in the case. If a consideration of all the evidence in the case produces in your minds an abiding conviction to a moral certainty that the defendant is guilty, the same sort of conviction that would lead you to act in your own affairs in weighty and important matters, then you haven't any reasonable doubt. In other words, it is a kind of doubt for which you could furnish a reason.

A reasonable doubt does not mean that you say to yourself, "I like the defendant, I will let him off"; or "I dislike the defendant and I won't let him off"; or "I do not like his lawyer"; or "I do like his lawyer." These are whims and caprices that don't count in the trial of a lawsuit. So that a reasonable doubt or a want of reasonable doubt will be based upon the evidence in this case, the facts.

Now, how do you get that evidence? Well, you have witnesses in the box, and you, the members of the jury, are the sole judges of which witnesses are to be believed and which witnesses, if any, are to be disbelieved, and to what extent you will accept the testimony of any witness who you think is telling the truth in part or not in part. And in that connection, just as in ordinary affairs on the outside, we have a rule of law that if you think that any witness has testified falsely wilfully to a material fact in the case, you are at liberty to disregard his entire testimony; or, if you want to, you can accept such part as appeals to your belief and reject the rest. That is what you do outside. If a man lies to you about a serious matter, and you think he did it de- [fol. 154] liberately, it is perfectly proper for you to say to yourself as a matter of common sense, "I will never believe him again," or, dealing with such a person you might say, "Yes, I will believe him when he says he was standing on the corner of Court and Montague Streets, but anything else which rests solely on his statement I won't accept." Isn't that just a matter of common sense?

There are two kinds of evidence produced by the witnesses in this case: One is the sort which deals with the facts in issue, and then the evidence of character witnesses, that is, witnesses who give evidence concerning the reputation of the defendant in the community. And character evidence, if it is believed, standing by itself, can create a reasonable doubt in your minds. But it is for you to weigh

that character evidence. And in that connection I may say to you that the weight of any bit of evidence in the case is for you and not for me or the lawyers.

In connection with the character evidence in the case I permitted a question whether or not the witness knew that in 1920 this defendant had been arrested for receiving stolen goods. I tried to give you the instruction then that that question was permitted only to test the standards of character evidence that these character witnesses seemed to have. There isn't any proof in the case that could be produced before you legally within the rules of evidence that this defendant was arrested in 1920 for receiving stolen goods, and that fact you are not to hold against him; nor are you to assume what the consequences of that arrest were. You just drive it from your mind so far as he is concerned, and take it into consideration only in weighing the evidence of the character witnesses.

I have tried to tell you that the facts in the case are for you, but, nevertheless, particularly in view of the fact that there has been a day's recess, it is not improper for me to analyze the facts briefly anyway, so long as you adhere rigidly to the admonition that if anything I say does not [fol. 155] agree with your recollection you are to take your own recollection and not mine, just as you do with the lawyers. I am not going to try to retell the evidence in detail.

Kratter, you will remember, said on July 15, 1946, he did not go to the defendant's premises, but made an investigation to discover the defendant's address. Then he said on the 16th, having located that address, he did go to the defendant's premises at 3.30 P. M. and stayed there about twenty minutes, during the course of which he called the accountant at the defendant's suggestion. Then Kratter says he went on the 17th again to that address and, after having looked at the records for an hour and a half, went out to lunch, and after lunch there was this discussion in the park, the details of which you will remember. And then finally he and Michelson parted at the subway, as Kratter was on his way home.

Then, says Kratter, on the 18th, in the afternoon, having completed an examination in the forenoon, he disclosed this matter to another agent, who advised him to report it at once to the Intelligence Unit, which Kratter said he did.

And then on the 19th, now operating under the direction of the Intelligence Unit, a neighbor of Kratter took a telephone call and Michelson furnished a telephone number. Then, on the 22nd of July, Kratter called Michelson and was told to call him back on Friday, July 26th. Then, on the 26th, Kratter said he did call Michelson back in the presence of Agent Yung and suggested that the $5,000, formerly the subject of discussion, should be delivered at a hotel, which Michelson objected to; whereupon Kratter said he would drop it, he didn't want to be involved. Then, on July 29th, occurred the incident at the St. George, the placing of the listening device, which under the circumstances of this case, standing by themselves, was perfectly proper. And then the Government attempted to have recorded the talk that occurred in that other room, the incident about the $5,000, succeeded by the arrest.

[fol. 156] Now, then you had some testimony from Agents Betts and Sherry and Young all dealing with the incidents on the 29th of July. If you will remember, it was Betts who installed the equipment, and Sherry took the transcript, and Agent Yung made the arrest after having listened to the conversation, at least until he had left the room to make the arrest.

Now, Michelson's story is entirely different. He says, as I read his testimony, the only meeting he had with Agent Kratter, outside of the 29th, anyway, and perhaps one short intervening visit, was on the 15th of July, that Monday. Then he describes the same, substantially the same incidents that Kratter had talked about as having occurred on two separate dates, namely, the 16th and the 17th, the call to the accountant, the transaction in the office, the lunch, the talk in the park. Michelson says those two sets of circumstances took place not on the 16th and 17th, respectively, but on the 15th. The significance of that, or what I think is the significance of that, I will mention in a minute.

The tenor of Michelson's testimony was that it was Kratter who first solicited the bribe, and that it was Kratter who insisted upon it, and that Kratter overbore him and frightened him, as a result of which the subsequent transactions took place.

The witness Gerstein said he was in the 74 Bowery store on the 15th of July and saw Kratter there. He said there was a little argument. He said he was 6 feet away, his

estimate being the distance from the witness box to the gate there in the courtroom. When I asked him specifically if he had heard anything about threats of the F. B. I. he said he could not hear anything. Now, I am not suggesting or attempting to make my recollection your recollection, nor am I attempting to say what weight you shall give to these things. Is that clear? I do not want to do that. I want you to be the judges of the facts as you are.

[fol. 157] The witness Osterfeld testified as to having seen Michelson on the 15th of July, and in response to a question, as I understand his testimony, he denied that Michelson had said that anyone had solicited a bribe from him.

Why do I recount this evidence? Because you have got to take this evidence, such parts of it as you accept, and decide these three issues: Did Michelson give or offer to give, or both offer and give, because that is quite possible, $5,000 to Kratter on July 29, 1946, which is alleged to have taken place in the Hotel St. George? I am going to leave that without any further comment. The second issue is, was it the intention of Michelson to influence Kratter to do something or to allow a fraud upon the United States, or to induce Kratter to violate his duty, any one of those three, on July 29, 1946? You will remember that Kratter said in connection with that issue that Michelson wanted him to straighten out his returns. And you will remember that it is also in the evidence, as I recall it, that on the 29th of July Michelson said to Kratter, "You know what to do." And it is also in the evidence, at least from the Government's side, as I recall it, that Michelson said to Kratter something about $1200 for 1942 and $900 for 1943.

On the other side of the picture, Michelson takes the position on this issue of intent that there was nothing due on the face of the return, and Kratter said he had no knowledge of anything due. Now, I tried to admonish you we are not trying the question of whether or not Michelson owed any income tax; that isn't before us. The question that is before us is a pure charge of bribery, and nothing else. The only reason that I admitted the evidence that would bear upon the amount of income tax due, if any, was in connection with helping you to decide what the probabilities are in the case. Because obviously one question is whether or not, even if there might be nothing due, it was in Michelson's mind that there was something due—and you

[fol. 158] believe it was in his mind—that might be one fact that would help you to reach a result on the question of intent.

Now, on the question of entrapment. The Government emphasizes the fact that when he was arrested Michelson never made any disclosure of this matter to Mr. Pittoni, but simply concerned himself with saying, "I can only hurt myself." Nor, said the Government, did he make any disclosure to Mr. Yung, but said, "I will tell the proper authorities." And Mr. Yung said, "I am representing the Commissioner of Internal Revenue," but there was no disclosure of any attempt at entrapment.

And in the conversation overheard at the Hotel St. George the Government claims that part of it was that Kratter said to Michelson, "I am doing this at your insistance, isn't that so?" And Michelson replied, "Yes." Then, said the Government, here is a voluntary trip to the St. George, the man coming over from New York to Brooklyn to the Hotel St. George. Does that sound like the man was so in the clutches of Kratter that he had to do a thing like that? And finally the Government said, did he or didn't he disclose to his own accountant on this occasion what had happened? Michelson said he did, so I recall it, and Osterfeld said he did not so far as the bribe is concerned, but he talked about a demand having been made for money which he, Osterfeld, considered to be for taxes.

On the other side of the picture the defendant said, what about that conversation in the park? Doesn't that sound like entrapment? And they said, why should Kratter give Michelson a card if it wasn't something of that sort? Then they say, look at the delay, if you believe us. The suggestion about a bribe took place on the 15th, and there was no disclosure, according to the Government's evidence, until the 18th, and then there were two other matters that they say bear directly on this. They say, look at this man Kratter, he just changed his job, and then they went into Kratter's finances, all of which, if I understand their point, [fol. 159] was to impress you with the fact that this thought of a bribe originated in the mind of Kratter and nobody else.

Now, you weigh evidence exactly the same as you weigh matters in your own business affairs; you consider the probabilities, which is more probable, which is more

believable, this story or that story. And in weighing the evidence of witnesses you do the same thing as you do in the ordinary walks of life; you consider their interest, you consider their demeanor, you consider the way the man says the thing. Does he say it as if he is trying to make it up, or does he give the appearance of frankness? You evaluate them as individuals on the basis of their demeanor.

Of course, Michelson is interested. The question of whether the Government agents are interested or not I leave to you to determine as a fact. And I say to you now that you are to consider the quality and not the quantity of the evidence. It would be obviously unfair if the side with the most witnesses would automatically win. You have got to bring your intelligence to bear, and your common sense.

In that connection let me say this: It is of no consequence to you what happens to Michelson in the event of a verdict of guilty on your part; that is not within your province.

And let me say this to you, that bias or prejudice of any kind is out of place. That applies to bias in favor of the Government or bias against the Government. And let me tell you why: If bias enters into a case, if sympathy enters into a case, you have got exactly the same situation. Sympathy is just one aspect, if you will, of the same thing as bias. In other words, if a guilty defendant can be acquitted today because of sympathy, then an innocent defendant can be convicted tomorrow because of bias. What does that mean? It means that you are letting your emotions run away from your judgment, you are letting your [fol. 160] heart govern your head. You do not do that in a court of law, it is too dangerous.

You have a duty to agree. Well, what do I mean by that? You have sworn that you will well and truly try the issues joined between these parties, and that means a lot. You should give heed and take counsel with your fellow members on the jury. You won't hold out for any caprice, for any arbitrary reason. And while I would not want you for a moment to relinquish or abdicate any firm conviction that you may have, yet the minority ought to give due weight and due consideration to the majority, if that happens. You understand I am not saying to you that you should relinquish any firm conviction that you have, but I do mean that you should decide this case on the evidence

in the case and that alone as you understand it and as you evaluate it.

I am not giving you this case for deliberation at this point. I am taking a recess for five minutes now.

(The jury retired.)

The Court: Now, are there any exceptions?

Mr. Castellano: I think your Honor should look at requests 12, 14 and 19.

The Court: 12?

Mr. Castellano: Yes.

The Court: I charged the jury on the question of establishing that beyond a reasonable doubt. In substance I said that they had to prove beyond a reasonable doubt that Michelson, and he alone, originated the idea.

As to No. 14, I could not without being boresome tell them again that if the idea originated in the agent's mind there should be a verdict of not guilty.

19. I didn't say anything either way on that as I remember.

Mr. Castellano: You did make a reference to it.

The Court: Oh, I said they were to consider whether they had an interest, but I didn't say whether their testimony [fol. 161] was to be given no grater credence than any other testimony. I think I should.

Mr. Castellano: There was something said by the Government in the summation about Webster's dictionary definition.

The Court: I did not hear that.

Mr. Pittoni: I drew the distinction between extortion and bribery.

The Court: You may have your exception. Do you except to my refusal to charge 19?

Mr. Castellano: Yes, your Honor.

The Court: Let me not influence you. Put your own exceptions on the record as you wish them.

Mr. Castellano: I think that your Honor stated you would charge that.

The Court: I am going to charge that a Government agent is entitled to no greater weight than any other witness.

Mr. Pittoni: You said that in effect.

Mr. Castellano: No.

Mr. Pittoni: Didn't you say in effect that it was for them to judge?

The Court; But the request goes further than that. You have no standing to except, your hands are tied.

Mr. Pittoni: I have no standing and I don't except, but I would like to say this, your Honor: Your Honor in stating the facts said that the agent never went back to Michelson's place of business after he went to lunch, after he went to the park.

The Court: I said except for one short visit, according to Michelson's story.

Mr. Pittoni: You were summarizing Kratter's testimony at that time.

The Court: No, not Kratter. I was trying to attempt to summarize Michelson's testimony.

[fol. 162] Mr. Pittoni: The way it reads now it shows that Kratter never went back to Michelson's place of business, and that is the main part of my argument with Gerstein's testimony, that Kratter went back.

The Court: According to his own evidence.

Mr. Pittoni: That is right.

The Court: Yes. Bring them back.

Is there any reason why I should mention anything about missing witnesses?

Mr. Pittoni: No.

Mr. Casteliano: No.

The Court: I do not think so.

(The jury returned to the court room.)

The Court: Members of the jury, I am about to give you this case for your decision, and I think the most significant thing I can say to you before I do that is again to remind you that you are the sole judges of the facts and the credibility of the witnesses. To show you how serious and important that is I reviewed the facts with you, and as soon as you left the court room it was called to my attention that I may have said it to you, or misled you about Kratter's visits to Michelson. Michelson said that Kratter visited him on July 15th, that is my recollection, and they spent the greater part of the day there. Kratter said that he visited Michelson briefly on the afternoon of the 16th and went back again on the 17th and spent the greater part of the day there on the 17th. Isn't that the way you remember it? That is the way I do.

Concerning the credibility of witnesses, use your common sense. It is your duty to try to find out who in your judgment is telling the truth. And all these witnesses stand equally in the eyes of the law, except perhaps in so far as interest is concerned. If you should find interest so marked on one side that it might sway the evidence, that you should take into consideration. In other words, a Government witness for example, is not entitled to any greater credence [fol. 163] than any other witness just because he is a Government agent. Is that clear? You are to decide these matters on the evidence. The interest of which we speak is an interest in the outcome of the case, and I am leaving it to you to determine how far Government witnesses may be interested in the outcome of the case. Of course, this being a criminal case the defendant is interested in the outcome.

Take this case, members of the jury, and do justice between these parties.

The alternate juror is discharged with the thanks of the Court.

(The bailiff was duly sworn and the jury retired at 1.10 P. M.)

Verdict

(The jury returned at 3.30 P. M.)

The Clerk of the Court: Members of the jury, have you agreed upon a verdict?

The Foreman: We have.

The Clerk: In the case of United States vs. Solomon Michelson, how do you find the defendant, guilty or not guilty on count 1?

The Foreman: Guilty.

The Clerk: How do you find the defendant, guilty or not guilty on count 2?

The Foreman: Guilty.

The Clerk: Members of the jury, as the Court has received your verdict, you say you find the defendant, Solomon Michelson, guilty on both counts 1 and 2, so say you all.

Motion to Set Aside Verdict

Mr. Castellano: The defendant moves to set aside the verdict on the ground that it is contrary to the law and contrary to the evidence.

The Court: Denied.

Mr. Castellano: Exception.

The Court: Is there anything more, Mr. Castellano?

[fol. 164] Mr. Castellano: Not at this time.

The Court: The defendant may continue on bail, and I will set it for sentence on the 16th day of January.

I want to say for the record that I am appreciative of the efforts of both counsel, that they both tried the case well, and I am personally grateful to them for the cooperation I got from them.

Mr. Pittoni: Thank you very much, your Honor.

Mr. Castellano: Thank you.

IN UNITED STATES DISTRICT COURT

[Title omitted]

DEFENDANT'S REQUESTS TO CHARGE

1. There is no charge against the defendant relating to any violation of the income tax laws. The only charge made is one of bribery and that is the sole charge you are required to pass upon.

2. It is charged in Count I that the defendant gave $5,000 to the Agent with intent to influence his decision and action on a question and matter before him in his official capacity, and with the further intent to influence the Agent to collude in and allow a fraud on the United States, and with the further intent to induce him to do an act in viola- [fol. 165] tion of his duty. In Count II the charge is made that the defendant offered to give the money with the same intent.

3. There can be no conviction unless the criminal intent is established and the criminal intent charged here is in three parts, to influence the decision of the Agent in the matter pending before him, to influence the Agent to collude in and allow a fraud on the United States, and the final intent to induce him to do an act in violation of his duty with reference to the defendant's income tax returns. This is the intent charged in the indictment and the Government must establish such intent beyond a reasonable doubt before you can convict.

4. In determining the criminal intent if any existed, you must therefore decide (1) was there a matter pending before the Agent in his official capacity, (2) did any facts exist from which you can draw the conclusion that the defendant desired to influence the Agent to collude in and allow a fraud on the Government, and (3) did any facts exist from which you can draw the inference that the defendant intended that the Agent violate his duty in reference to the defendant's income tax returns. If you find that such intent as charged in the indictment did not exist you must return a verdict of not guilty.

5. The first duties of Government Agents and Officers is to prevent crime, and not to punish crime. It is not the duty of Government Officers to incite, instigate, or cause the commission of a crime for the sole purpose of prosecuting and punishing it.

6. It is contrary to public policy and to establish law to punish a man for the commission of a crime which he would never have committed if the Agents and Officers of [fol. 166] the law had not inspired, incited, persuaded and lured him to commit it.

7. The law should receive a sensible construction, and while a person may appear to have violated the letter of the law, if it appears that such violation originated with and was brought about by the acts of the Government Agent, it is the duty of the jury to find such person not guilty in order to prevent the injustice which would result from a conviction.

8. The trial Judge and you members of the trial jury are only advised as to the facts in every case when they are developed at the trial. If the trial shows an issue of fact as to whether the Agent originated the idea of the money payment or whether the idea originated with the defendant, it becomes the duty of the Court to submit that question to the jury along with other questions that arise in the case.

9. Even though the evidence shows that the money did pass to the Agent from the defendant it still becomes the duty of the jury to determine who originated the idea for the delivery and payment of this money. The mere delivery or payment of the money is insufficient to convict because if you believe that the idea originated with the Agent, it

should become your duty to acquit the defendant. Any other verdict would lead to an absurd and unjust result which would be contrary to the intent of Congress in passing the bribery law.

10. The defendant has the right to avail himself of the defense that he was induced by the Agent to make the payment, such defense is available even though the defendant made the payment, as the Government cannot be permitted to obtain a conviction for a crime if it appears that the Government Officers are the instigators of the defendant's conduct.

[fol. 167] 11. The fact that the defendant paid a fine of $100.00 twenty years ago in the Court of Special Sessions on his misdemeanor conviction for keeping and offering for sale watch dials to which were affixed the false trade mark of the Waltham Watch Co. must not be considered as evidence indicating guilt on the bribery charge under this indictment. We are here dealing only with a bribery charge and there is no evidence that the defendant at any other time or on any other occasion offered or gave money to any person for any unlawful purpose.

12. If you entertain a reasonable doubt as to whether the criminal design in this case originated with the Agent of the Government or with the defendant, you must return a verdict of not guilty on both counts of the indictment.

13. Defendant contends that the criminal design here originated with the Agent upon the Agent's first visit to defendant's place of business and that the Agent implanted in defendant's mind the idea of paying over $5,000 in cash. You have heard the evidence relating to this first visit by the Agent when two cards with the name of the Agent and his Revenue Office address printed thereon. One card has the Agent's home telephone number written in pencil thereon. The Agent admitted writing his residence telephone on one card which he wrote at the store of defendant and gave it to defendant. You have the duty to consider this evidence in determining who proposed the idea of paying money for any unlawful purpose. If you find the idea originated in the mind of the Agent and was proposed by him you must return a verdict of not guilty on both counts. If you have a reasonable doubt on this question you must return a verdict of not guilty on both counts.

Likewise you must consider the other evidence, including the lunch, the walk to the park and the conference in the park. You may properly ask, are these the usual methods [fol. 168] of performing the duties of a Government official or was it all part of the official's plan to induce and cause a payment of money upon which to base a prosecution, if it was a plan of the Agent, you must acquit the defendant.

14. If you find that the criminal design originated with the Agent or you have a reasonable doubt on the question, you need go no further. Under such circumstances you must find defendant not guilty on both counts.

15. If you find the criminal design originated with the Agent, then any criminal design or intent of defendant to pay the money as a bribe after the proposal by the Agent becomes immaterial, and the defendant must be acquitted. He cannot be convicted if he acquiesced and agreed to the suggestion of the Agent.

16. The amounts of money involved here or the purpose of defendant in delivering it to the Agent becomes immaterial and you must acquit the defendant if you find the payment or delivery of cash originated in the mind of the Agent and he was the first one to propose the idea.

17. The indictment itself cannot be considered as proof of guilt, it is merely a charge that is made against the defendant.

18. The defendant is presumed to be innocent and the burden rests upon the Government throughout the trial to prove that the defendant committed the crimes charged beyond a reasonable doubt. This burden never shifts and always remains upon the Government. If you entertain a reasonable doubt upon the whole case, or as to the intent of the defendant, or as to whether the Agent or the defendant originated the idea of the payment you must return a verdict of not guilty on both counts. If the evidence is [fol. 169] as consistent with innocence as with guilt you must acquit the defendant.

19. The testimony of a Government Agent is not entitled to any more consideration than any other witness. The fact that he is employed by the Government does not warrant you in attaching more importance to his testimony than that which you accord to other witnesses.

20. Character witnesses have been called by the defendant. I charge you that such evidence as to the defendant's reputation when considered with the other evidence in the case may be sufficient to create a reasonable doubt as to the guilt of the defendant. If you find that you have such a reasonable doubt as to the guilt of the defendant after considering the testimony of the character witnesses and the other evidence in the case, then you must return a verdict of not guilty on both counts.

21. During your deliberations you members of the jury are required to go over the case and the evidence, and to confer with one another. If a juror reaches a conclusion which he believes is based upon the evidence, and he is convinced that his conclusion is correct, such juror has no right to reach any other conclusion simply because other jurors ask him to do so. Your report to the Court is either a verdict or a report that you cannot agree upon a verdict.

[fol. 170] GOVERNMENT'S EXHIBIT 1

Card of Maurice M. Kratter with telephone number.

GOVERNMENT'S EXHIBIT 2

"Daily report of official duties performed" for July 15, 1946, July 16, 1946, and July 17, 1946.

GOVERNMENT'S EXHIBIT 3 FOR IDENTIFICATION

Slip of paper with telephone number.

GOVERNMENT'S EXHIBIT 4 FOR IDENTIFICATION

Transcript of notes taken by Mr. Sherry.

GOVERNMENT'S EXHIBIT 5

Package containing $5,000.

DEFENDANT'S EXHIBIT A

Card of Maurice M. Kratter.

DEFENDANT'S EXHIBIT B

Yellow sheet with telephone number.

[fol. 171] IN DISTRICT COURT OF THE UNITED STATES

No. 41165

UNITED STATES

v.

SOLOMON MICHELSON

Criminal in two (2) counts for violation of U. S. C., Title 18, Sec. 91

JUDGMENT AND COMMITMENT

On this 16th day of January, 1947, came the United States Attorney, and the defendant Solomon Michelson appearing in proper person, by Counsel, and

The defendant having been convicted on a verdict of guilty of the offense charged in the indictment in the above-entitled cause, to wit: within the Eastern District of New York on or about July 29, 1946, did give $5,000 to an officer acting for and on behalf of the United States in an official function under the authority of the Treasury Dept., with intent to influence the decision of said Internal Revenue Agent on a question in respect to defendant's income tax returns, then pending before him in his official capacity; and did offer said Internal Revenue Agent $5,000 with intent to influence his decision on the above matter and question of defendant's income tax returns and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of eighteen (18) months and to pay a fine of $1.00 on Count I and to be imprisoned for 18 months and to pay a fine of $2,500 on Count II; and to stand committed until said fines be [fol. 172] paid or he be otherwise discharged as provided by law, without costs. Sentence of imprisonment on each count to run concurrently.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States

Marshal or other qualified officer and that the same shall serve as the commitment herein.

(Signed) Harold M. Kennedy, United States District Judge.

IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF APPEAL

Name and address of appellant: Solomon Michelson, 3152 Brighton 6th Street, Brooklyn, New York.

Name and address of appellant's attorney: Louis J. Castellano, 32 Court Street, Brooklyn, New York.

[fol. 173] Offense: Bribery, Title 18 U. S. C. 91, Count I charges giving $5,000 to an Internal Revenue Agent. Count II charges that the defendant did offer a sum of money $5,000 to an Internal Revenue Agent in violation of Section 91, Title 18 U. S. C.

Date of judgment: January 16th, 1947.

Description of judgment or sentence: Count I—Imprisonment for term of 18 months. Fine $1.00. Count II—Imprisonment for term of 18 months. Fine $2,500. Prison sentences to run concurrently on both Counts.

Name of prison where confined, if not on bail: Defendant admitted to bail pending appeal.

[fol. 174] I, Solomon Michelson, appellant, hereby appeal to the United States Circuit Court of Appeals for the Second Circuit from the judgment above mentioned on the grounds set forth below.

Dated January 16th, 1947.

Solomon Michelson, Appellant.

GROUNDS OF APPEAL

1. The Court erred in admitting evidence relating to an arrest of defendant in 1920.

2. The Court erred in its charge to the jury relating to the statutory intent required to be proved under the specific language of the indictment which charged three separate purposes.

3. The Court erred in admitting testimony with reference to conversations and income tax liability of the defendant.

4. The Court erred in denying defendant's application for a mistrial.

5. The Court erred in refusing to charge the jury in the language of certain requests to charge submitted by the defendant.

[fol. 175] In United States District Court

[Title omitted]

Stipulation as to Record and Exhibits

It is hereby stipulated and agreed that the foregoing record contains a true copy of the indictment, notice of appeal, Clerk's record of proceedings, judgment, transcript of the evidence and proceedings had at the trial, requests to charge, and constitutes the record on appeal as agreed upon by the parties; and that the record has been prepared and filed within the time allowed by law and the Court.

The parties further agree that said record may be filed as the record on appeal, and certified by the Clerk of this Court as the record on appeal herein.

The parties further agree that the exhibits need not be made a part of the record and that the original exhibits or photostatic copies thereof may be used upon the argument of the appeal.

April 1, 1947.

J. Vincent Keogh, United States Attorney, Eastern District of New York, by Mario Pittoni, Assistant United States Attorney; Louis J. Castellano, Attorney for Solomon Michelson, Defendant-Appellant.

[fol. 176] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 177] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1947

No. 130

(Argued January 8, 1948. Decided January 26, 1948)

Docket No. 20818

UNITED STATES OF AMERICA, Appellee,

v.

SOLOMON MICHELSON, Defendant-Appellant

Before Swan, Chase and Frank, Circuit Judges

Appeal from a judgment of conviction, on two counts, entered by the United States District Court for the Eastern District of New York. Affirmed as to the First Count; Reversed as to the Second Count.

J. Vincent Keogh (Mario Pittoni, of counsel), for appellee.

Louis J. Castellano (Brooklyn, N. Y.), for appellant.

[fol. 178] Defendant was indicted and tried in the Eastern District of New York for violation of 18 U. S. C. A. § 91 which provides in part as follows: "Whoever shall promise, offer, or give, * * * any money or other thing of value, * * * to any officer of the United States, or to any person acting for or on behalf of the United States in any official function, under or by authority of any department or office of the Government thereof, * * * with intent to influence his decision or action on any question, matter, cause or proceeding which may at any time be pending, or which may by law be brought before him in his official capacity, or in his place of trust or profit, or with intent to influence him to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States, or to induce him to do or omit to do any act in violation of his lawful duty, shall be fined not more than three times the amount of money or value of the thing so offered, promised, given, made or tendered, or caused or procured to be so offered, promised, given, made or tendered, and imprisoned not more than three years."

The first count of the indictment reads: "That on or about the 29th day of July, 1946, within the Eastern District of New York, the above named defendant, Solomon Michelson, did give a sum of money, to wit: Five Thousand Dollars ($5,000.00), to an officer and a person acting for and on behalf of the United States in an official function under the authority of the Treasury Department, to wit: Maurice M. Kratter, Internal Revenue Agent, with intent to influence his decision and action on a question and matter then pending before him in his official capacity, with intent to influence said Internal Revenue Agent to collude in and allow a fraud on the United States and to induce him to do an act in violation of his lawful duty in respect to the defendant's income tax return. (Title 18, United States Code, Section [fol. 179] 91.)" The second count is identical with the first, except that the words "to offer" are substituted for the word "give." The jury found defendant guilty on both counts. The judge sentenced him to imprisonment for eighteen months on the first, and to imprisonment for eighteen months and a fine of $2,500 on the second, the prison sentences to run concurrently.

FRANK, Circuit Judge:

The Second Count

We think that Congress, as it lawfully may, provided that to "offer" a bribe and to "give" a bribe are two distinct crimes even when parts of a single transaction, since the one (to "give" involves an element which the other (to "offer") does not.[1] The test, as stated in *Morgan* v. *Devine*, 237 U. S. 632, 640, is whether "separate acts have been committed with the requisite criminal intent. * * *" The present case does not meet that test. Kratter, the principal government witness, testified as follows: On July 17, 1946, in

---

[1] *Blockburger* v. *United States*, 284 U. S. 299, 303-304; *Albrecht* v. *United States*, 273 U. S. 1, 11; *Burton* v. *United States*, 202 U. S. 344, 377; *Morgan* v. *Devine*, 237 U. S. 632, 640; *Gavieres* v. *United States*, 220 U. S. 338, 342; *Lindsay* v. *United States*, 134 F. (2d) 960, 961 (C. C. A. 10); *cf. American Tobacco Co.* v. *United States*, 328 U. S. 781, 787-788.

New York City,[2] defendant offered him a bribe of $5,000, and he told defendant he would take it.[3] Defendant then [fol. 180] said that, when he had the money, he would telephone Kratter. On July 26, defendant, on the telephone, told Kratter that he had the money and wanted to meet Kratter to give it to him. On July 29, Kratter by phone, arranged with defendant for a meeting at a room in the St. George Hotel in Brooklyn.[4] Kratter went to that room. His own words, as to what then occurred, follow: "A few minutes later there was a knock on the door. I opened the door and Mr. Michelson came in, and I closed the door after him. He dropped a package on a dresser or chifferobe, something like that that was in the hotel room, and he sat down and I sat down. I asked him if he had the money, and he said, 'Yes, it is in the bag over there.' I took the bag, unwrapped it, and he took out a large number of five, ten and twenty-dollar bills, and he said, Mr. Michelson said, 'There is $5,000 there.' I made a quick count of the bills and satisfied myself that there was approximately $5,000

---

[2] New York City is in the Southern District of New York.

[3] Kratter's testimony as to that conversation is as follows:

"Q. Did you and Mr. Michelson have a conversation while you were walking along together? A. Yes, a conversation ensued during the walk. Mr. Michelson kept insisting that I do something to straighten out his tax return and fix things up for him so he wouldn't get into too much trouble. He offered me $3,000 while we were walking toward the subway, and then he said, 'Make it $5,000.' I told him I wouldn't touch that kind of money, I wasn't interested in it, I didn't want to get mixed up in that situation. Then he kept insisting. We had walked about two or three blocks from his office, and I finally stopped in the street and kept talking to him. He refused to leave me, and insisted that we come to some sort of agreement regarding his tax situation. I finally told him—he said, 'Will you take $5,000?' And he told me he would pay another $5,000 to the Government. I finally said 'O. K.,' in order to get away from him, and he told me he would call me up when he had the money, and he asked me for my business card and home telephone. I gave him one of my cards and wrote down the phone number while we were standing on the street, and then we parted."

[4] Brooklyn is in the Eastern District of New York.

in the package * * *." Defendant's conduct at that meeting in Brooklyn constituted his performance of the agreement of July 17—an illegal bargain resulting from a previously accepted offer—to give the $5,000 bribe. He did not [fol. 181] on that day or at any other time in the Eastern District both offer and give. He merely gave.[5]

The offer of July 17 cannot sustain the conviction on count 2. For defendant made that offer in New York City in the Southern District, and the defendant was indicted and tried in the Eastern District. Had that offer been specified in the indictment, defendant, thus warned of the improper venue, would have waived the lack of proper venue by going to trial without interposing an objection.[6] The same might have been true if, during the trial, defendant had in some manner been put on notice that the government intended to rely on that New York City offer as a crime, for which he was being tried. But here there was nothing so to notify him. Indeed, the trial judge, in his charge, told the jury that the issue was whether defendant gave or offered to give, or both, $5,000 to Kratter on July 29 at the Hotel St. George. We therefore conclude that we must reverse as to the second count.

Alleged Errors as to the First Count

1. The defendant called three character witnesses who testified that he had an excellent reputation for "honesty, truthfulness and being a law-abiding citizen." On cross-examination, they were asked whether they had heard (a) that in 1927 he had been convicted in a New York court

---

[5] Kratter testified that after he had thus received the money, "I asked Mr. Michelson what he wanted me to do for the money, and he told me he wanted me to turn in a report which would indicate that he owed about $1,200 on his 1943 tax return and about $900 on his 1942 return. He said that was all he wanted me to do. Then I told him, 'You understand the only reason I am doing this is because you insist upon it, isn't that so?' And he said, 'Yes, that is right.'"

This conversation did not show a new offer but merely arrangements for carrying out the details of the previous agreement.

[6] *United States* v. *Jones*, 162 F. (2d) 72 (C. C. A. 2).

[fol. 182] and sentenced to pay a fine of $100 or 30 days in jail, and (b) that in 1920 he had been arrested for receiving stolen goods.

The judge, out of the jury's presence, received the assurance of the government's counsel that defendant had been thus arrested in 1920. The defendant, on the witness-stand, had previously admitted the conviction in 1927. The judge, when these witnesses were being questioned, said: "However, I instruct the jury that what is happening now is this: the defendant has called character witnesses, and the basis for the evidence given by those character witnesses is the reputation of the defendant in the community, and since the defendant tenders the issue of his reputation the prosecution may ask the witness if she has heard of various incidents in his career. I say to you that regardless of her answer you are not to assume that the incidents asked about actually took place. All that is happening is that this witness' standard of opinion of the reputation of the defendant is being tested. Is that clear?" In his charge to the jury, the judge said: "In connection with the character evidence in the case I permitted a question whether or not the witness knew that in 1920 this defendant had been arrested for receiving stolen goods. I tried to give you the instruction then that that question was permitted only to test the standards of character evidence that these character witnesses seemed to have. There isn't any proof in the case that could be produced before you legally within the rules of evidence that this defendant was arrested in 1920 for receiving stolen goods, and that fact you are not to hold against him; nor are you to assume what the consequences of that arrest were. You just drive it from your mind so far as he is concerned, and take it into consideration only in weighing the evidence of the character witnesses." The questions were of the kind often [fol. 183] held proper in examining "character witnesses."[7] That being the rule, we see no abuse of discretion in permitting them to be asked here.[8] Defendant asserts error in

[7] See, *e. g.*, *Mannix* v. *United States*, 140 F. (2d) 250, 252 (C. C. A. 4); *Josey* v. *United States*, 135 F. (2d) 809, 811 (App. D. C.); *Spalitto* v. *United States*, 39 F. (2d) 782, 785-787 (C. C. A. 8); *cf. Stewart* v. *United States*, 104 F. (2d) 234, 235 (App. D. C.).

[8] Wigmore, *Evidence* (3d ed. 1940) § 988, after noting that

putting the question about the 1920 arrest to a witness who had known defendant only since 1932. We cannot agree, for she might have heard rumors of an arrest which happened before she knew him.

[fol. 184] 3. On direct examination by his own counsel, defendant testified to his conviction in 1927 on a charge of possessing counterfeit watch-dials, but that he had no other trouble since he had been in the United States. On cross-examination, defendant testified that, in 1930, in an application signed by him for a license for vending second-hand jewelry, he had never been arrested for any offense. Thereupon he was asked whether he had stated in this application that he had been convicted of "counterfeiting trade-marks on watches." His counsel objected on the ground that the conviction had been for "possession of counterfeit." The court said, "Sustained on that ground." Government counsel then asked, "You did not say in that paper that you had been arrested and that you were convicted of that charge?" No objection was made. We find no prejudicial error.

4. Defendant complains that the judge in his charge unfairly interpreted the testimony of a witness, Osterfeld,

---

"such inquiries are almost universally admitted," not as "impeachment by extrinsic testimony of particular acts of misconduct," but as means of testing the character "witness' grounds of knowledge," continues with these comments: "But the serious objection to them is that practically the above distinction—between rumors of such conduct, as affecting reputation, and the fact of it as violating the rule against particular facts—cannot be maintained in the mind of the jury. The rumor of the misconduct, when admitted, goes far, in spite of all theory and of the judge's charge, towards fixing the misconduct as a fact upon the other person, and thus does three improper things,—(1) it violates the fundamental rule of fairness that prohibits the use of such facts, (2) it gets at them by hearsay only, and not by trustworthy testimony, and (3) it leaves the other person no means of defending himself by denial or explanation, such as he would otherwise have had if the rule had allowed that conduct to be made the subject of an issue. Moreover, these are not occurrences of possibility, but of daily practice. This method of inquiry on cross-examination is frequently resorted to by counsel for the

in a manner prejudicial to defendant. We think the interpretation not unfair. But, even assuming the contrary, there is no reversible error. In the first place, defendant did not object to this part of the charge.[9] In the second place, the judge made it plain that, despite his comments on the evidence, the jury were to rely on their own recollection of the evidence.

Affirmed as to the first count; Reversed as to the second.

[fol. 185] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 26th day of January, one thousand nine hundred and forty-eight.

Present: Hon. Thomas W. Swan, Hon. Harrie B. Chase, Hon. Jerome N. Frank, Circuit Judges.

---

very purpose of injuring by indirection a character which they are forbidden directly to attack in that way; they rely upon the mere putting of the question (not caring that it is answered negatively) to convey their covert insinuation. The value of the injury for testing purposes is often so small and the opportunities of its abuse by underhand ways are so great that the practice may amount to little more than a mere subterfuge, and should be strictly supervised by forbidding it to counsel who do not use it in good faith."

Because, as Wigmore says, the jury almost surely cannot comprehend the judge's limiting instruction, the writer of this opinion wishes that the United States Supreme Court would tell us to follow what appears to be the Illinois rule, *i.e.*, that such questions are improper unless they relate to offenses similar to those for which the defendant is on trial. See *Aiken* v. *People*, 183 Ill. 215, 55 N. E. 695; *cf.* *People* v. *Hannon*, 381 Ill. 206, 44 N. E. (2d) 923.

---

[9] See *United States* v. *Marino*, 141 F. (2d) 771 (C. C. A. 2). Nor did he object to a question the judge put to that witness, a question, moreover, which we think entirely proper.

UNITED STATES, Plaintiff-Appellee,

v.

SOLOMON MICHELSON, Defendant-Appellant

Appeal from the District Court of the United States for the Eastern District of New York

This cause came on to be heard on the transcript of record from the District Court of the United States for the Eastern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed as to the first count; reversed as to the second in accordance with the opinion of this court.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

Alexander M. Bell, Clerk.

[fol. 186] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. United States v. Solomon Michelson. Judgment. United States Circuit Court of Appeals, Second Circuit. Filed Jan. 26, 1948. Alexander M. Bell, Clerk.

[fol. 187] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 188] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 5, 1948

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the procedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on Cover: File No. 52,842. U. S. Circuit Court of Appeals, Second Circuit. Term No. 612. Solomon Michelson, Petitioner, vs. The United States of America. Petition for a writ of certiorari and exhibit thereto. Filed February 20, 1948. Term No. 612 O. T. 1947.